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UNITED STATES OF AMERICA

U.S. Federal Power Commission Reports

Opinions, Decisions, and Orders

Volume 35

JANUARY 1, 1966–JUNE 30, 1966

Reported by the Commission

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1970

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $6.25

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[1] Order No. 319 not printed here; it appears at 31 F.R. 4118, *et seq.* The Regulations prescribed are codified at (18 CFR § 3.735–1 to § 3.735–32).

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FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By Title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947, 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-fifth of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, January 1, 1966 to June 30, 1966, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-21

FINDINGS AND ORDER RESCINDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 3, 1966)

On November 17, 1965, Cities Service Gas Company (Applicant), filed an application for an order rescinding the certificate of public convenience and necessity issued on October 28, 1964, in Docket No. CP65-21, 32 FPC 1223, authorizing the construction and operation of metering and regulating facilities and to transport natural gas to Rounds and Stewart Natural Gasoline Company, Inc. (Rounds and Stewart), on an interruptible basis for use in a pilot recycling operation, all as more fully set forth in the application.

Applicant states that subsequent to the issuance of the said certificate, Rounds and Stewart advised that the recycling operation was not practicable at this time and that it would not require the requested natural gas; and consequently Applicant does not now require the authorization to install and operate the proposed metering and regulating facilities and to transport natural gas to Rounds and Stewart.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the certificate of public convenience and necessity issued to Cities Service Gas Company in Docket No. CP65-21 on October 28, 1964, be rescinded as requested.

The Commission orders:

The certificate of public convenience and necessity issued to Cities Service Gas Company in Docket No. CP65-21 on October 28, 1964, is cancelled and rescinded.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP66-61

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 3, 1966)

On August 24, 1965, Eastern Shore Natural Gas Company (Applicant), filed in Docket No. CP66-61 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of metering and regulating facilities to deliver interruptible gas to Chesapeake Utilities Corporation (Chesapeake) at Harrington, Delaware, for resale to the Delaware State Fair Grounds, all as more fully set forth in the application.

Applicant seeks authorization to tap its present 2-inch extension line to Killen Grain Company located at a point south of Harrington, Delaware, in order to render additional gas service to Chesapeake. Chesapeake plans to extend its line to the Delaware State Fair Grounds. The additional gas will be used to heat portions of the stands, the grooms' quarters, and to cook and heat in the restaurant. Applicant states that it will not be necessary to increase the contract demand of Chesapeake nor will Applicant require any additional supply of gas.

Applicant states that the required volume of gas can be made available from the supply presently available for sale during the summer period. The annual incremental volume is estimated by Applicant at 1,324 Mcf, while the estimated peak-day requirement will not exceed 100 Mcf.

The increased service proposed will not require any additional capital expenditure by Applicant. The cost of the proposed tap and construction of metering and regulating facilities will be made at the expense of Chesapeake.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12059, *et al.* (18 FPC 710).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of natural gas as hereinbefore described and more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

Before Commissioners: David S. Black, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

GRAND RIVER DAM AUTHORITY, PROJECT NO. 2524

ORDER ISSUING LICENSE (MAJOR)

(Issued January 3, 1966)*

Application was filed on June 11, 1965, and supplemented on July 22, and September 10, 1965, by Grand River Dam Authority (Applicant) of Vinita, Oklahoma for a license under Section 4(e) of the Federal Power Act (Act) for the proposed Salina Pumped-Storage Project (Salina Project) designated as Project No. 2524 to be located on the Chimney Rock Hollow and Little Saline Creek, tributaries of the Grand River, in the vicinity of the Towns of Pryor, Salina and Locust Grove in Mayes and Wagoner Counties, Oklahoma.

The proposed project would be constructed in four stages, each having an installed capacity of 130,000 kw and scheduled for completion in 1968, 1971, 1974 and 1977, respectively. It would consist of two interconnected upper reservoirs; the Chimney Rock reservoir with an area of 785 acres at full pool elevation of 870 feet and providing 12,500 acre-feet of useful storage would be built in the first stage; the Little Saline reservoir with an area of 1570 acres at full pool elevation of 870 feet and providing 25,000 acre-feet of useful storage would be built in the third stage. Both upper reservoirs will have earth and rock-filled dams of the same design and overall length of approximately 2,500 feet and a maximum height of 180 feet and will be connected by a 2,500 ft. canal. The applicant proposes to use the Markham Ferry reservoir of Project No. 2183 as the lower pool of the project.

The power facilities of the project include a powerhouse ultimately containing 12 reversible pump-turbine units, three units to be installed at each stage, and certain transmission facilities as hereinafter described. The ultimate installed generating capacity of the project will be rated 520,000 kw.

The power output from the project would be used for peaking purposes and sold to Applicant's industrial, municipal and rural electric customers, with the excess capacity and energy to be delivered to Public Service Company of Oklahoma.

The ratio of the annual benefits to annual costs, as estimated by the Commission Staff on the basis of total annual benefits of $10,222,400 and total annual costs of $7,928,300 for the ultimate development of 520,000 kw, would be 1.29.

The Department of the Army has reported that the plans of the project structures are satisfactory, insofar as interests of navigation are concerned. However, it recommended that the license include a provision requiring the operation of the project to be at all times consistent with the flood control regulations prescribed for Project No. 2183, as required in Article 33 herein.

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*By order issued August 19, 1966, Article 12 was deleted from this order, 36 FPC 484.

The Department of the Interior in reporting on the application recommended for inclusion in the license certain special conditions for the protection and preservation of fish and wildlife and for the filing of a revised Exhibit R, as set forth in Articles 16, 17, 18, 19 of attached Form L–4, and Articles 35 and 36. A recommendation that licensee be required to provide minimum releases below Markham Ferry reservoir to be determined cooperatively with the State and Federal fish and wildlife agencies is considered to be covered adequately by the provision of the present Article 25 of the license for Project No. 2183 which requires the licensee thereof to modify operation of that project in the interest of fish and wildlife resources as prescribed by the Commission upon recommendations of the State and Federal agencies. In addition, the Department requested that the Applicant cooperate with the Muskogee Area Office of the Bureau of Indian Affairs to provide for the relocation of Indians now on lands which will be affected by the project and that Applicant cooperate with the University of Oklahoma at Norman in connection with an archeological survey prior to the construction of the project, as set forth in Articles 37 and 38.

The Department of Health, Education, and Welfare reported that the project, as planned, is not expected to have any adverse effects on water supply or water quality control.

The Commission finds:

(1) Applicant is a public corporation and an instrumentality of the State of Oklahoma; it is a municipality within the meaning of Section 3(7) of the Act; and it has submitted satisfactory evidence of compliance with all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting applications have been filed.

(3) The project will affect a government dam. However, as hereinafter provided, such effect will not be inconsistent with the operation of the government dam.

(4) The issuance of a license for the project as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter included the proposed project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development and for other beneficial public use, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 693,300 horsepower, and the amount of annual charges based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act, is reasonable.

(7) The generator leads, twelve 12.8/161-kv transformers and bus facilities at the project powerhouse, two 161-kv double circuit transmission lines from project powerhouse to the Markham Ferry 161-kv switchyard, 161/345-kv substation in the vicinity of Markham Ferry switchyard, a 345-kv single-circuit

transmission line from the 161/345-kv substation to Oneta substation of Public Service Company of Oklahoma and appurtenant facilities as set forth in paragraph B below and which were included in the application for license, are part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The exhibits designated and described in paragraph B below conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent therein indicated.

(9) The Markham Ferry reservoir to be utilized by the Salina project would affect the navigable capacity of the Arkansas River and thus affect the interests of interstate or foreign commerce.

The Commission orders:

(A) This license is hereby issued to the Grand River Dam Authority (Licensee) of Vinita, Oklahoma under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of December 1, 1965, for the construction, operation and maintenance of Project No. 2524 on the Chimney Rock Hollow and Little Saline Creek, tributaries of the Grand River affecting navigable waters of the United States in the vicinity of the Towns of Pryor, Salina, and Locust Grove and in Mayes and Wagoner Counties, Oklahoma, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2524 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States—such project area and project boundary being more specifically shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit	FPC No.	Titled, "Grand River Dam Authority, Salina pumped-storage project"
J	2524-1	General map.
K	2524-2	First 130,000 kw installation—project map.

(ii) All project works consisting principally of: (1) two earth and rock-fill dams both of the same design and size (total length approximately 2,500 feet and maximum height 180 feet); (2) two reservoirs, one with surface area of 785 acres and useful storage capacity of 12,500 acre-feet at full pool elevation 870, the other with surface area of approximately 1,570 acres and useful storage capacity of 25,000 acre-feet at full pool elevation 870; (3) two canals, one 2,500 feet long connecting the two reservoirs, the other 1,800 feet long leading from the smaller reservoir to a forebay at the upper end of penstocks to a powerhouse; (4) reinforced concrete powerhouse with an installation of twelve reversible pump-turbine units rated at 43,300 kw each; (5) a substation; (6) three transmission lines, two being 161-kv double-circuit lines six miles long, the third being a 345-kv single-circuit line 32 miles long; (7) use of Markham Ferry reservoir (Project No. 2183) as the lower pool of the project; and (8) appurtenant facilities, the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

	FPC No.	Titled, "First 130,000 kw installation, general design drawing"
Exhibit L:		
Sheet 1	2524-3	Plan and profile.
Sheet 2	2524-4	Dam.
Sheet 3	2524-5	Canal and forebay sections.
Sheet 4	2524-6	Powerhouse.
Sheet 5	2524-7	Tailrace and forebay details.
Exhibit M revised: Consisting of three typewritten pages, filed in the Commission Aug. 12, 1965.		

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-4 (Revised June 1, 1964) entitled "Terms and Conditions of License for Unconstructed Project Affecting Navigable Waters of the United States" (32 FPC 839), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall commence construction of the works of each of the four stages of the project described below, and shall thereafter in good faith and with due diligence prosecute such construction, and shall complete each stage as follows:

(a) Commence not later than April 1, 1966, and complete not later than May 1, 1968, the construction of Stage 1 which includes Chimney Rock dam and reservoir; a canal between such reservoir and the forebay; the forebay; powerhouse with three reversible pump-turbine units installed with necessary penstocks and transformers and with one working bay; a 161-kv double-circuit transmission line from the powerhouse to the Markham Ferry 161-kv switchyard of Project No. 2183;

(b) Commence not later than April 1, 1969, and complete not later than July 1, 1971, the construction of Stage 2 which includes an extension to the powerhouse with three reversible pump-turbine units installed with necessary penstocks and transformers and with one working bay; a 345/161-kv substation in the vicinity of the 161-kv switchyard of Project No. 2183; and a 345-kv single-circuit transmission line to the Oneta Substation of Public Service Company of Oklahoma;

(c) Commence not later than April 1, 1972, and complete not later than July 1, 1974, the construction of Stage 3 which includes Little Saline dam and reservoir; a canal between such reservoir and Chimney Rock reservoir; an extension to the powerhouse with three reversible pump-turbine units installed with necessary penstocks and transformers and with one working bay; and second 161-kv double-circuit transmission line from the powerhouse to the Markham Ferry 161-kv switchyard of Project No. 2183;

(d) Commence not later than April 1, 1975, and complete not later than July 1, 1977, the construction of Stage 4 which includes an extension to the powerhouse with three reversible pump-turbine units installed with necessary penstocks and transformers.

Article 31. The Licensee shall file with the Commission not less than six months prior to the start of construction of each of Stages 2, 3, and 4 of the project, revised Exhibits F and K, in conformity with the Commission's rules and regulations, to show additional project area, if any, necessary for project purposes under each such stage.

Article 32. The Licensee shall submit, in conformity with the Commission's rules and regulations, Exhibit L drawings for project works contemplated under each of Stages 2, 3 and 4 of the project and shall not commence construction of any such stage until the Commission shall have approved the exhibit for that stage.

Article 33. Operation of the project shall not be inconsistent with the flood control regulations for Markham Ferry Project prescribed in Section 7 of the Act of Congress approved December 22, 1944 (58 Stat. 890; 33 USC 709), shall be such as not to alter adversely the modified inflow into the Federal Ft. Gibson project, and shall not be such as to affect injuriously the operation of Project No. 2183.

Article 34. The Licensee for Salina Pumped-Storage Project is authorized to utilize the Markham Ferry reservoir of Project No. 2183 as a source of water and as a lower pool for the operation of the Salina project when operating under this license.

Article 35. Licensee shall, within one year following issuance of this license, file for Commission approval in accordance with Section 4.41 *Exhibit R* of the Commission's Regulations under the Act a revised Exhibit R for the project, to include a plan for development of the recreational resources at the lower pool (Markham Ferry reservoir). Licensee shall not commence operation of the project prior to Commission approval of its Exhibit R.

Article 36. The Licensee shall, prior to operation of the project, consult with the Oklahoma Department of Wildlife Conservation and the United States Bureau of Sport Fisheries and Wildlife in determining the feasibility of a fishing platform on or near the retaining wall over-looking the tailrace of the Salina Pumped Storage Project powerhouse, to be designed and constructed so as to provide safe angling use of the powerhouse tailwaters.

Article 37. The Licensee shall obtain the necessary rights-of-way, easements, or title to Indian lands which may be required; negotiations with respect to obtaining such interests in Indian lands shall be conducted through the Muskogee Area Office of the Bureau of Indian Affairs.

Article 38. Licensee shall cooperate with the University of Oklahoma at Norman, Oklahoma, in a survey to determine the needs for salvage of archeological materials affected by the project, and shall, upon written request of the Commission, make available to the University for archeological survey and salvage work funds not to exceed a total of $5,000 of which not more than $1,000 may be made available for archeological survey of the project area.

Article 39: The Licensee shall pay to the United States the following annual charge effective as of December 1, 1965:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 693,300 horsepower.

(D) The exhibits designated and described in Paragraph B above are hereby approved as part of this license to the extent therein indicated.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided by Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-151

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND ACCEPTING RATE SCHEDULES AND SERVICE AGREEMENTS FOR FILING

(Issued January 3, 1966)

On November 12, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-151 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing temporary winter demand service to its existing customers for the period beginning with the billing month of December 1965, and ending with the billing month of March, 1966, as more fully set forth in the application.

Applicant states that a total of approximately 30,000 Mcf per day of natural gas has been made available to its customers on a prorated basis (listed in Appendix A hereto) to be utilized in the greater part for processing and peak shaving for firm and small volume consumers. No additional facilities will be required to provide the proposed service.

Concurrently with the application Applicant has tendered for filing Temporary Winter Demand (TWD) Rate Schedules as original sheets to its FPC Gas Tariff, First Revised Volume No. 1[1] and the related service agreements with customers who will receive the service.

The four rate schedules and related rates are as follows:

Rate schedule	Demand	Commodity
TWD-1	$4.50	$22.14
TWD-2	4.50	22.64
TWD-3	4.50	23.41
TWD-B	4.50	25.21

Applicant estimates these rates will generate $1,306,630 of revenues in the four month period, based on a contract demand volume of 29,780 Mcf and the sale of 3,323,650 Mcf.

Applicant proposes that the industrial and commercial customers (listed in Appendix B) be authorized to receive firm gas during the period of service without interruption.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

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[1] TWD-1, original sheets Nos. 35a and 35b. TWD-2, original sheets Nos. 35c and 35d. TWD-3, original sheets Nos. 35e and 35f. TWD-B, original sheets Nos. 35g and 35h. Form of Service Agreement, original sheets Nos. 55a and 55b.

At a hearing held on December 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that certain conditions relating to the proposed Temporary Winter Demand (TWD) service be attached to the Commission's order authorizing the proposed service, and as related hereinafter.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing Applicant's Temporary Winter Demand (TWD) Rate Schedules TWD-1, TWD-2, TWD-3 and TWD-B and service agreements dated October 26, 1965, and filed November 12, 1965.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern Natural Gas Company authorizing the sale and delivery of natural gas for the limited period beginning December, 1965, and ending March, 1966, as hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The grant of the certificate herein shall not constitute a determination of the reasonableness or propriety of the rate Applicant proposes to charge in connection with the service herein authorized, or of the form or forms thereof, and shall not be construed as a waiver of any of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Rules and Regulations with respect to the service herein authorized, and is without prejudice to any findings or orders which have been, or may hereafter be made by the

Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceeding or objection relating to the rate to be charged for the service herein authorized, or any position any customer of Applicant may hereafter take with respect to the proper distribution or allocation of Applicant's cost and expenses in any proceeding where such distribution or allocation is an issue in determining the respective rates to be charged by Applicant for the various types and classifications of service rendered by it.

(D) Northern Natural Gas Company's Temporary Winter Demand (TWD) Rate Schedules TWD-1, TWD-2, TWD-3 and TWD-B and Service Agreements dated October 26, 1965, and filed November 12, 1965, are accepted for filing effective on the date of the issuance of this order.

APPENDIX A

Northern Natural Gas Co., docket No. CP66-151, customers and allocation of gas

Name:	*Volume (Mcf)*
City of Cedar Falls	400
City of Duluth	975
City of Emmetsburg	75
City of Hutchinson	175
Interstate Power Co	1080
City of Lyons	50
Minnesota Natural Gas Co	1500
Northern Illinois Gas Co	5500
Northern States Power Co	4800
Northwestern Public Service Co	1125
Village of Pender	75
Town of West Bend	50
Town of Remsen	25
Western Power & Gas Co., Inc.:	
Group 1A	225
Group 1B	1775
Group 5A	14
Group 5B	986
Town of Whittemore	25
Peoples Division of Northern Natural:	
Group 2B	3650
Group 4B	3650
Group 5A	3425
Group 5B	200
Total	29, 780

APPENDIX B

Northern Natural Gas Co., docket No. CP66–151, industrial or commercial customers to receive firm gas

Consumer	Distributor	Mcf
(1) United States Steel Corp	City of Duluth	975
(2) Northwestern States Portland Cement Co	Interstate Power Co	100
(3) Lehigh Portland Cement Co	do	600
(4) Todd County Dairy Co-Op	Minnesota Natural Gas Co	275
(5) First District Creamery	do	200
(6) Tri County Dairy Co-Op	do	100
(7) Waldorf Paper Product Co	Northern States Power Co	4,800
(8) Huron Powerplant	Northwestern Public Service Co	1,125
(9) Allied Chemical & Dye Corp	People Division of Northern	3,000
(10) John Deere Processing	do	900
(11) Corporation of New Malleray	do	200
(12) Central Dairy Co-Op	do	200
(13) Hopkinton Co-Op Creamery Association	do	400
(14) Maguoketa Municipal Powerplant	do	400
(15) Northeast Iowa Dairy Co-Op	do	250
(16) Farmers Mutual Co-Op Creamery	do	150
(17) Rockford Brick & Tile Co	do	900
(18) Waukon Farmers Co-Op Creamery	do	250
(19) George A. Harmel & Co	do	650
(20) Minnesota Malting	do	350
(21) Claremont Creamery Association	do	150
(22) Morris Rifkin & Sons	do	75
(23) Webster Co-Op Dairy Association	do	275
(24) Minnesota Cheese Products Association	do	150
(25) Lakeside Packing Co	do	100
(26) Plainview Co-Op Creamery	do	225
(27) Preston Creamery	do	275
(28) Rochester State Hospital	do	450
(29) St. Charles Condensing	do	150
(30) Spring Valley Co-Op Creamery	do	300
(31) Spring Valley Municipal Utilities	do	175
(32) Albert Lea Co-Op Creamery	do	100
(33) Federal Correction Institute	do	200
(34) Department of Utilities of Schugler, Nebr	do	650

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHLAND ROYALTY COMPANY, DOCKET NO. RI66–231

ORDER GRANTING MOTION FOR RECONSIDERATION, ACCEPTING CONDITIONALLY NOTICE OF CHANGE FOR FILING AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued January 3, 1966)

Southland Royalty Company (Southland) filed a motion for reconsideration on December 6, 1965, of the Commission's undocketed order issued September 10, 1965, rejecting, *inter alia*, a proposed rate increase from 15.6488¢ to 16.6584¢ per Mcf [1] tendered on August 20, 1965, by Southland for the sale of gas-well gas and low pressure flash gas to El Paso Natural Gas Company under its FPC Gas Rate Schedule No. 14 in the Permian Basin Area of Texas. The contract involved here was executed prior to January 1, 1961, and thus covers a sale of old gas under Opinion No. 468. Southland's proposed rate, which exceeds the applicable just and reasonable rate ceilings determined in Opinion No. 468 for the sale of gas in the Permian Basin Area, was rejected for the reasons set forth in the order issued August 26, 1965, 34 FPC 595, in *Socony Mobil Oil Company, Inc.*

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[1] The proposed increased rate is designated as Supplement No. 9 to Southland's FPC Gas Rate Schedule No. 14.

(Operator), et al. Details of Southland's proposed rate increase are set forth in Appendix "A" hereof.

On October 20, 1965, subsequent to the issuance of our rejection order, the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA–10, No. 8385, *et al.*) stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468–A, 34 FPC 159, 1068, as to Skelly Oil Company, Phillips Petroleum Company and Warren Production Corporation. By order issued November 12, 1965, 34 FPC 1288, we stayed, *inter alia*, until January 20, 1966, the effectiveness of paragraph (H) relating to the moratorium on rate increases as to all producers covered by these opinions which have not filed a petition for court review. Accordingly, we believe it appropriate to grant Southland's motion for reconsideration of the Commission's order issued September 10, 1965, rejecting Southland's rate filing, and to conditionally accept such rate increase for filing and to simultaneously suspend it for a period of five months from September 20, 1965, the date it would have become effective had it not been rejected. Our acceptance of the instant rate increase filing is expressly conditioned to provide that the rate increase will be rejected, *ab initio*, in the event the court stay referred to above is dissolved or Opinion Nos. 468 and 468–A are upheld upon judicial review insofar as ordering paragraph (H) is concerned.

Southland requests that its proposed rate increase be permitted to become effective as of August 20, 1965. Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Southland's rate filing and such request is denied.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 9 to Southland's FPC Gas Rate Schedule No. 14 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 9 to Southland's FPC Gas Rate Schedule No. 14.

(B) Pending such hearing and decision thereon, Supplement No. 9 to Southland's FPC Gas Rate Schedule No. 14 is conditionally accepted for filing, as noted above, and is hereby suspended and the use thereof deferred until February 20, 1966, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C. 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.37(f)) on or before February 15, 1966.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-231.....	Southland Royalty Co., c/o Ross, Marsh & Foster, 725 15th St. NW., Washington, D.C. 20005. Attn: Bernard A. Foster, Jr., Esquire.	[4] 14	9	El Paso Natural Gas Co. (Clara Couch field, Crockett County, Tex.), (R.R. district No. 7-C), (Permian Basin area).	$177	8-20-65	[1] 9-20-65	2-20-66	15. 6488	[2,3] 16. 6584	RI60-148.

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[1] The stated effective date is the 1st day after expiration of the required statutory notice.

[2] Periodic rate increase.

[3] Pressure base is 14.65 psia.

[4] Contract executed prior to Jan. 1, 1961.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168, G-20435 AND G-20577

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR REHEARING AND MODIFYING COMMISSION ORDER

(Issued January 3, 1966)*

On December 10, 1965, Trunkline Gas Company (Trunkline) filed an application for rehearing of our order issued November 10, 1965, 34 FPC 1284, in this proceeding. That order held: (1) that Trunkline must pay The Superior Oil Company (Superior) interest in the amount of $33,212.67, which had accrued on accumulated charges that Trunkline had not properly paid Superior for gas previously bought and received from Superior and (2) that Trunkline must pay interest on such interest at 7 percent per annum accruing from March 30, 1964, until the date the required payment is made.

Trunkline challenges both of the above holdings. Respecting the first, Trunkline contends that we erred in requiring it to make any interest payment to Superior, arguing, *inter alia*, that it unconditionally tendered the unpaid charges to Superior but Superior unjustifiably refused payment; that the "filed rate" doctrine relied on in our order does not support holding Trunkline liable for interest on the charges not paid to Superior and that certain judicial decisions cited in our order are inapplicable or indeed require the opposite result.

Trunkline's objections to the first holding above are sufficiently answered by our November 10, 1965 order which held that there is a good and sufficient basis for requiring Trunkline to pay interest on the total amount Trunkline owed Superior.

Trunkline's objections to our second holding raises an issue not heretofore argued by the parties, namely, whether Trunkline should be required to pay compound interest on the sums due Superior. Before deciding this question, we think Superior and the Commission Staff should have an opportunity to present their views. Accordingly, we will grant rehearing of our order of November 10, 1965, insofar as it relates to the question of compound interest and allow Superior and the Staff 30 days to file briefs in support of their position on this issue.

The Commission orders:

(A) Trunkline's application for rehearing of the Commission's order of November 10, 1965, in this case, insofar as it relates to whether it should be obliged to pay compound interest, is granted for the purposes of giving the question further consideration.

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*See order issued March 4, 1966 on rehearing, etc., 35 FPC 335.

(B) Superior and the Commission Staff may file a brief in support of their position on the issue described in paragraph (A), *supra*, on or before 30 days of the date of this order.

(C) Except to the extent provided in paragraph (A), *supra*, Trunkline's application for rehearing of the Commission's order of November 10, 1965, in this case is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES

(Issued January 4, 1966)

On February 10, 1965, Alabama Power Company, licensee for Project No. 2146, filed application for Commission approval of revised Exhibits L and M showing proposed changes and modifications to the proposed Jordan Dam No. 2 development of the project, including the installation therein of the third (ultimate) generating unit during the initial construction of the Jordan Dam No. 2 development. Project No. 2146 is situated on the Coosa River, Alabama.

The proposed changes would provide for: (1) the use of one radial type intake gate per unit which would result in a reduced width in the intake structure; (2) relocation of the powerhouse downstream to secure a flatter slope on the earthen dike between the intake structure and the powerhouse; (3) construction of a deck over the powerhouse draft tubes where the step-up substation will be relocated; and (4) the raising of the forebay dikes by one foot and provide an additional two-foot high rock berm on the dikes for required freeboard including protection against wave action.

The structures for the Jordan Dam No. 2 development, as proposed to be changed and modified, are considered stable and adequate under both normal and flood water conditions of loading.

The Secretary of the Army and the Chief of Engineers have reported that since the application and revised exhibits do not give adequate information for an analysis of velocities caused by any of the turbine releases that will affect navigation in the tailrace and intake canals, the extent and effect of power release waves on navigation in the canals will require considerable study and analysis when navigation facilities on the Coosa River are added. However, the report adds, on the basis of the drawings, along with the provisions in the license in the interests of navigation, it is believed that a satisfactory navigation plan can be developed when needed in the future, and the report concludes that the plans of the project structures affecting navigation are satisfactory.

Our approval of the revised exhibits will provide for the installation during the initial construction of the Jordan Dam No. 2 development of the 3rd generating unit of 75,000 kw having a 100,000 nominal horsepower capacity.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's Rules and Regulations and should be approved as part of the license for the project:

	FPC number	Title, "Coosa River development, Jordan Dam No. 2"
Exhibit L revised:		
Sheet No. 25B	2146-221	Typical sections through intake, tailrace, and dike.
Sheet No. 26A	2146-222	General arrangement of powerhouse.
Sheet No. 27A	2146-223	Intake—Transverse section.
Sheet No. 27A-1	2146-224	Powerhouse—Transverse section.
Sheet No. 28A	2146-225	Powerhouse—Longitudinal section along center line units.
Sheet No. 29A	2146-226	Powerhouse—Plan at elevation 157.13.
Sheet No. 29B	2146-227	Powerhouse—Plan at elevation 142.75.
Sheet No. 29C	2146-228	Powerhouse—Plan at elevation 127.75.
Sheet No. 29D	2146-229	Powerhouse—Plan at elevation 110.0, center line of distributors.
Sheet No. 29E	2146-230	Powerhouse—Plan at elevation 86.50.
Exhibit M revised, Jordan No. 2 development, entitled, "General descriptions of mechanical, electrical, and transmission equipment," dated Feb. 5, 1965, and filed as part of the application.		

(2) The following described license exhibits which have been superseded should be eliminated from the license for the project: Exhibit L, Sheets Nos. 25B, 26A, 28A, 29A, 29B, and 29C (FPC Nos. 2146-203, 207, and 209 through 212, respectively) and Exhibit M, pages one and two, filed in the Commission on September 4, 1959.

(3) The authorized capacity to be installed during the initial construction of the Jordan Dam No. 2 development for the purpose of computing the capacity component of the administrative annual charge is by this order increased by 100,000 horsepower, or to a total installation of 920,000 horsepower for the entire project, and the amount of annual charges, based on such increased capacity, to be paid under the license for the project for the costs of administration of Part I of the Federal Power Act is reasonable.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2146, and the superseded license exhibits described in finding (2) above are hereby eliminated from the license for the project.

(B) Article 28 of the license is hereby further amended to show the authorized installed capacity of the project as being increased to 920,000 horsepower.

(C) This license amendment is effective as of December 1, 1965.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARKANSAS LOUISIANA GAS COMPANY, ET AL., DOCKET NO. G-4438, ET AL.

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AMENDING CERTIFICATES, PERMITTING AND APPROVING ABANDONMENT OF SERVICE, TERMINATING CERTIFICATE, AND ACCEPTING RELATED RATE SCHEDULES AND SUPPLEMENTS FOR FILING

(Issued January 4, 1966)

Each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce, for permission and approval to abandon service, or a petition to amend an existing certificate authorization, all as more fully described in the respective applications and petitions (and any supplements or amendments thereto) which are on file with the Commission.

The Applicants herein have filed related FPC Gas Rate Schedules and propose to initiate or abandon, add or delete natural gas service in interstate commerce as indicated by the tabulation herein. All sales certificated herein are either equal to or below the ceiling prices established by the Commission's Statement of General Policy No. 61-1, as amended, or involve sales for which permanent certificates have been previously issued.

After due notice, no petitions to intervene, notices of intervention, or protests to the granting of any of the respective applications or petitions in this order have been received.

At a hearing held on December 29, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will therefore, be a "natural-gas company" within the meaning of said Act upon the commencement of the service under the respective authorizations granted hereinafter.

(2) The sales of natural gas hereinbefore described, as more fully described in the respective applications, amendments and/or supplements herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sales of natural gas by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) The respective Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate authorizations heretofore issued by the Commission in Docket Nos. G–4438, G–4780, G–6073, CI60–509, CI61–524, CI63–337, CI65–755 and CI65–1319 should be amended as hereinafter ordered and conditioned.

(6) The sale of natural gas proposed to be abandoned by Applicant in Docket No. CI66–390, as hereinbefore described, all as more fully described in the tabulation herein and in the application is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act, and such abandonment should be permitted and approved and the related certificate heretofore issued in Docket No. G–19517 should be terminated.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the respective related rate schedules and supplements as designated or redesignated in the tabulation herein should be accepted for filing as hereinafter ordered.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order, authorizing the sales by the respective Applicants herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective applications, amendments, supplements and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The grant of the certificates issued herein on all applications filed after April 15, 1965, is upon the condition that no increase in rate which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy No. 61–1, as amended, shall be filed prior to the applicable dates, as indicated by footnotes 2 and 12 in the attached tabulation.

(E) The certificate issued herein in Docket No. CI66-342 is subject to the conditions set forth in paragraphs (E), (F) and (G) of the order accompanying Opinion No. 350 (27 FPC 35), except that said certificate shall not be subject to the Commission's ultimate determination in Docket No. R-200.

(F) The certificates heretofore issued in Docket Nos. G-4438, CI60-509 and CI65-1319 are amended by adding thereto authorization to sell natural gas to the same purchasers and in the same areas as covered by the original authorizations, pursuant to the rate schedule supplements as indicated in the tabulation herein.

(G) The authorization granted in paragraph (F) above in Docket No. CI60-509 authorizing the sale of gas by Union Producing Company to its parent, United Gas Pipe Line Company, determines the rate which legally may be paid by the buyer to the seller, but is without prejudice to any action which the Commission may take in any future rate proceeding involving either company.

(H) The certificate heretofore issued in Docket No. CI63-337 is amended by adding thereto authorization to sell additionally dedicated natural gas subject to the conditions set forth in paragraphs (C), (D) and (E) of the order accompanying Opinion No. 353 (27 FPC 449), except that the provisions relating to minimum take-or-pay of 80 percent of annual contract quantities shall not be applicable.

(I) The certificates heretofore issued in Dockets Nos. G-4780, G-6073 and CI61-524 are amended by deleting therefrom authorization to sell natural gas from acreage assigned to Applicants in Docket Nos. CI66-406, CI66-405 and CI63-337.

(J) The certificate heretofore issued in Docket No. CI65-755 is amended to include the sale of natural gas from the additional acreage and said authorization is conditioned as follows:

(a) The initial rate shall be 16.0 cents per Mcf at 14.65 psia for the gas produced from the newly dedicated acreage and 15.5 cents per Mcf at 14.65 psia for the gas attributable to the interest previously covered under Texas American Oil Corporation's FPC Gas Rate Schedule No. 1, or the applicable area rate, 16.5 cents per Mcf at 14.65 psia, less reductions therefrom for any quality deviations as determined pursuant to Ordering paragraph (B) of the Commission's Opinion No. 468, as modified by Opinion No. 468-A, 34 FPC 159, 1068, whichever is lower.

(b) No increase rate shall be filed prior to January 1, 1968, except in compliance with a specific order of the Commission, for a rate, inclusive of tax reimbursement, in excess of the applicable area rate as determined pursuant to Opinion No. 468, as modified by Opinion No. 468-A, or any subsequent order of the Commission,

(c) Applicant shall file within 90 days from the date of initial delivery a Rate Schedule-Quality Statement as specified in ordering paragraph (F) of Opinion No. 468, as modified by Opinion No. 468-A, and

(d) If the quality of the gas delivered hereunder at any time deviates from the quality standards set forth in Ordering paragraph (B) of Opinion No. 468-A so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act; *provided, however,* that adjustments reflecting changes in Btu content shall be computed by the applicable formula and charged without the filing of a notice of change in rate.

(K) Permission for and approval of the abandonment of service by Applicant in Docket No. CI66–390 as hereinbefore described and as more fully described in the application herein is granted and the related certificate heretofore issued in Docket No. G–19517 is terminated.

(L) The respective related rate schedules and supplements as indicated in the tabulation herein are accepted for filing subject to the applicable Commission Regulations under the Natural Gas Act to be effective on the dates as indicated in the tabulation herein.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
G–4438 C 11–8–65 as supplemented 11–30–65.	Arkansas Louisiana Gas Co.	Mississippi River Transmission Corp., Hico-Knowles field, Lincoln Parish, La.	First revised sheet Nos. 2 and 15 and original sheet No. 23A of FPC gas tariff, original vol. No. 3.[1]	------	------
CI60–509 C 11–15–65 [2]	Union Producing Co	United Gas Pipe Line Co., Hynes Ranch, Refugio County, Tex.	Amended Agreement, 10–14–65.[3] [4]	238	4
CI63–337 (CI61–524) C 6–7–65.[5]	Pan American Petroleum Corp. (Operator), et al.[6]	Michigan Wisconsin Pipe Line Co., Woodward gas area, Woodward County, Okla.	Assigned, 6–25–62 [7] Assigned, 3–2–65 [7]	345 345	8 9
CI65–755 C 7–2–65, 7–26–65,[8] 12–16–65.[8a] [2]	Texas Crude Oil Co. (Operator), et al.[9]	El Paso Natural Gas Co., Sonora field, Sutton County, Tex.	Supplemental Agreement, 6–8–65.[4] [10] [11]	9	1
CI65–1319 C 11–10–65.[12]	Amax Petroleum Corp.	Panhandle Eastern Pipe Line Co., Dye unit No. 1, Beaver County, Okla.	Amended, 9–30–65 [4]	17	2
CI66–238 A 9–27–65.[12]	Vernon J. Main, Jr	Bluebonnet Gas Corp., Lottie-Bayou White area, Pointe Coupee Parish, La.	Contract, 8–26–65 [4]	1	------
CI66–342 A 10–26–65.[12]	Jones & Pellow Oil Co. (Operator), et al.[13]	Panhandle Eastern Pipe Line Co., Valley Center West area, Dewey County, Okla.	Contract, 9–13–65	2	------
CI66–390 (G–19517), B 11–12–65.	Pan American Petroleum Corp. (Operator), et al.	El Paso Natural Gas Co., Angels Peak-Gallup field, San Juan County, N. Mex.	Notice of cancellation, 11–8–65.[1] [14]	261	1
CI66–392 A 11–12–65.[12]	Leland Fikes (Operator), et al.	Texas Gas Transmission Corp., North Welsh field, Jefferson Davis Parish, La.	Contract 9–28–65 [4]	7	------
CI66–393 A 11–12–65.	Marshall Burlew (Operator), et al.	Texas Gas Transmission Corp., Midland field, Muhlenberg County, Ky.	Contract, 10–18–65 [4]	1	------
CI66–399 A 11–12–65.[12]	Phillips Petroleum Co.	Cities Service Gas Co., Bishop area, Roger Mills County, Okla.	Contract, 10–26–65 [15] Letter 10–27–65 [4] [16]	415 415	------ 1
CI66–400 A 11–12–65.[12]	Phillips Petroleum Co. (Operator), et al.	Cities Service Gas Co., Bishop area, Ellis County, Okla.	Contract, 10–25–65 [15] Letter 10–27–65 [4] [16]	416 416	------ 1
CI66–403 A 11–15–65 [2]	Southern Union Production Co. (Operator), et al.	Arkansas Louisiana Gas Co., Gilmer area, Upshur County, Tex.	Contract, 5–3–65 Agreement 9–14–65 [17] [4]	17 17	------ 1

Filing code:
- A—Initial service.
- B—Abandonment.
- C—Amendment to add acreage.
- D—Amendment to delete acreage.
- E—Succession.
- F—Partial Succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser, field, and location	FPC rate schedule to be accepted		
			Description and date of document	No.	Supp.
A CI66-405 (G-6073), F 11-15-65.	Hugh A. Hawthorne (successor to Pan American Petroleum Corp.).	American Louisiana Pipe Line Co., South Elton field, Jefferson Davis Parish, La.	Contract, 6-1-53 [18]	4	
			Agreement, 6-1-53 [19]	4	1
			Letter agreement, 6-19-53.[20]	4	2
			Agreement, 11-1-53 [19]	4	3
			Agreement, 8-20-54 [21]	4	4
			Letter amended, 10-1-54.[22]	4	5
			Letter amended, 4-11-55.[23]	4	6
			Letter amended, 12-30-55.[24]	4	7
			Letter amended, 6-7-56.[25]	4	8
			Assigned, 10-1-62,[26] effective date: 10-1-62.	4	9
			Assigned, 8-16-65,[27] effective date: 8-16-65.	4	10
A CI66-406 (G-4780), F 11-15-65.	Hugh A. Hawthorne (successor to Amerada Petroleum Corp.).	United Gas Pipe Line Co., South Elton field, Jefferson Davis Parish, La.	Contract, 12-31-57 [28]	5	
			Letter agreement, 12-31-57.[29]	5	1
			Letter agreement, 12-1-58.[29]	5	2
			Letter agreement, 7-1-60.[29]	5	3
			Letter agreement, 7-1-64.[29]	5	4
			Assigned, 10-1-62,[26] effective date: 10-1-62.	5	5
			Assigned, 8-16-65,[27] effective date: 8-16-65.	5	6

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[1] Effective date: Date of this order.

[2] Jan. 1, 1968, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.

[3] Adds oil well gas.

[4] Effective date: date of initial delivery.

[5] Adds acreage acquired from Shell Oil Co. in Docket No. CI61-524.

[6] By letter filed 8-6-65 applicant expressed willingness to accept authorization for the additional acreage as conditioned herein.

[7] Conveys acreage from Shell Oil Co. to Pan American Petroleum Corp. (Operator), *et al.*

[8] Amends the 7-2-65 filing.

[8a] Adds interest of Sinclair Oil & Gas Co.

[9] By letter filed 12-9-65 applicant expressed willingness to accept a permanent certificate conditioned the same as its temporary certificate issued 12-1-65.

[10] Adds new acreage and interest in acreage presently covered under Texas American Oil Corp. (Operator), *et al.*, FPC GRS No. 1, in Docket No. CI64-1318, which covers Texas Crude's interest as an "*et al.*" party.

[11] Provides for a price of 15.5¢/Mcf for Crude Oil's interest in the gas produced by Texas American from section 121 and formerly sold under the latter's FPC GRS No. 1.

[12] July 1, 1967, moratorium date pursuant to Commission's Statement of General Policy 61-1, as amended.

[13] By letter filed 12-8-65 applicant expressed willingness to accept a permanent certificate conditioned as were the certificates issued in Opinion No. 350 (excluding R-200 condition).

[14] Source of gas depleted.

[15] Dedicated acreage pertains to sales from gas reserves located above the base of the Morrow Formation.

[16] Relieves seller of obligation to compress gas and gives buyer option to do so.

[17] Eliminates premature termination and indefinite pricing provision from contract.

[18] Basic contract between Stanolind Oil and Gas Co. (now Pan American Petroleum Corp.) and American Natural Gas Co. (now American Louisiana Pipe Line Co.); on file as Pan American's FPC GRS No. 156.

[19] Revises the contract quantity provision.

[20] Defines the quantity of gas in the basic contract if new contracts are entered into.

[21] Extends the time for buyer to obtain a certificate.

[22] Buyer informs seller that a satisfactory certificate has been obtained.

[23] Defines average daily quantity until an initial determination of reserves has been made.

[24] Extends the time for making a reserve determination.

[25] Extends the date for deliveries to commence.

[26] Assignment whereby applicant acquired the interests of Pan American and Amerada in the 7,300 foot Marginulia Sand of the assigned leases.

[27] Assignment whereby applicant surrenders a portion of the 10-1-62 assignment back to Pan American and Amerada while acquiring their interests in certain other leases.

[28] Basic contract between Amerada Petroleum Corp. and United Gas Pipe Line Co.; on file as Amerada Petroleum Corp. FPC GRS No. 65.

[29] Amends taxing provisions.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

BLUEBONNET GAS CORPORATION, DOCKET NO. CP66-157

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1966)

On November 17, 1965, Bluebonnet Gas Corporation (Applicant) filed in Docket No. CP66-157 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale of natural gas to Florida Gas Transmission Company (Florida Gas) for resale, as more fully described in the application.

Applicant will construct and operate metering and regulating facilities in Bayou White Field, Pointe Coupee Parish, Louisiana, to transport gas to be purchased by Applicant from Vernon J. Main, Jr. (Main). Applicant estimates that the proposed deliveries through these facilities will be 1,000 Mcf of gas per day from estimated dedicated reserves of 3,055 MMcf at 15.025 psia.

On September 27, 1965, Main filed in Docket No. CI66-238 an application for certificate authorization for the proposed sale to Applicant. Main's requested authorization is being issued simultaneously herewith under Arkansas Louisiana Gas Company, *et al.*, Docket No. G-4438, *et al.*, *supra*, p. 17.

Main will construct approximately 1.5 miles of 2½-inch gathering line from his well to a point near Florida Gas' pipeline which passes through Pointe Coupee Parish, Louisiana. Applicant's proposed facilities will connect those of Main and Florida Gas.

Applicant will purchase the gas from Main at 15 cents per Mcf and sell all of it to Florida Gas at 16.5 cents per Mcf under Applicant's Rate Schedule X-1.

The estimated cost of the proposed facilities is $13,000, which includes $3,500 to be reimbursed to Florida Gas for the cost of the tap. The installation costs will be financed through the issuance of additional common stock to Applicant's parent company, Lumar Gas Corporation. The proposal is economically feasible.

Due notice of the filing of the application was published in the Federal Register on December 3, 1965 (30 F.R. 15001). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Bluebonnet Gas Corporation, a Texas corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 21, 1965, in Docket No. CP65-326 (33 FPC 1032).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Bluebonnet Gas Corporation, authorizing the construction and operation of the facilities and the sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the proposed sale and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CONSUMERS POWER COMPANY, PROJECT NO. 2436

ORDER ISSUING LICENSE (MAJOR)

(Issued January 4, 1966)*

Application was filed on December 30, 1963, and supplemented on September 24, 1964, and July 19 and September 24, 1965, by Consumers Power Company (Applicant) of Jackson, Michigan, under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2436, known as the Foote Plant, located on Au Sable River in Iosco County, Michigan. No lands of the United States are affected by the project.

Construction of the Foote Plant (originally known as Rogers Bank Dam) was commenced in 1916, with commercial operation starting on January 17, 1918. The project substation was rebuilt in a different location in 1921 and the operating head was raised 2 feet in 1925. No further changes have been made to the project since 1925, except that control of the powerplant was converted to semiautomatic operation in 1962.

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* Rehearing granted by order issued February 23, 1966.

There is ample evidence available that there was long continued and extensive use of Au Sable River for log driving operations, the quantities running into billions of board feet during the years 1867 to 1908. Large quantities of the logs were fed into the Au Sable River from points above Applicant's Mio hydroelectric development at river mile 72.7, designated as Project No. 2448, application for license for which is pending. The sawmills receiving the logs were located at the mouth of the river in the towns of Oscoda and Au Sable on Lake Huron. The Foote Plant is located on the Au Sable River at river mile 12.4.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project the terms and conditions in the interests of fish, wildlife, and recreation set forth in attached Form L-3.

The Department of Health, Education, and Welfare has advised that the project has no adverse effect on water supply, water pollution control or vector control, and none is expected.

The Michigan Department of Conservation has advised that it has reached an agreement with Applicant (dated November 17, 1964) under which Applicant will discharge minimum flows into the Au Sable River in the interests of fish and wildlife, and sell or lease to State or local agencies such project lands as may be reasonably required to accommodate an orderly scheme of recreational development. To protect the fishery below the project dam, we are by Article 32 requiring Applicant to discharge water below the dam in an amount comparable in quantity to the experimented minimum discharges in effect and observed by Applicant and the Michigan Department of Conservation on September 29, 1964.

We have noted that the project boundary shown on the land Exhibit K filed as part of the application for license exceeds the area limits for project reservoirs imposed by Section 4.41(iii) of the Commission's Regulations under the Federal Power Act. However, since the excess land area shown appears to have considerable value for recreation, the aforesaid extension of project boundary is justified.

Applicant has filed an Exhibit R as part of its application, showing present recreational needs which we are herein approving to the extent indicated in paragraph (D) below, as a part of this license. By Article 31 we are requiring Applicant to continue to cooperate with Federal, State and local agencies in the development and maintenance of recreational facilities including the reservation and transfer of project lands as may be appropriate for recreational purposes, and to report the results of such cooperation and development to the Commission periodically.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license April 1, 1962.

The Commission finds:

(1) The Au Sable River, from its mouth to points upstream above Mio at river mile 72.7, is a navigable waterway of the United States.

(2) Foote Plant Project No. 2436 is located on navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Michigan, and has sub-

mitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 12,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(8) Exhibit R, filed as part of the application, as supplemented on July 16 and September 24, 1965, conforms to the Commission's rules and regulations and should be approved as part of this license, except to the extent that it relates to minimum water flow releases below the project dam.

(9) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Consumers Power Company (Licensee) of Jackson, Michigan, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of the Foote Plant Project No. 2436, located on the Au Sable River, in Iosco County, Michigan, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Foote Plant Project No. 2436 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 1 (FPC No. 2436-1) General Map of Project.

Exhibit K: Sheet 1 to 3, incl. (FPC Nos. 2436-2 to -4, inclusive) Detail Map of Project.

(ii) A dam about 40 feet high composed of two earth embankments, total length 3,900 feet, flanking a powerhouse and spillway section of hollow concrete 214 feet long, with three spillway bays controlled by steel tainter gates; (2) a reservoir, called Foote Pond, about 11 miles long and 1,800 acres in surface area with a normal operating level of 639.17 feet; (3) a steel frame and brick powerhouse with concrete substructure containing three hydroelectric units of

3,000 kw each and appurtenant facilities; (4) a substation adjoining the powerhouse containing two 3-phase, 5,000 kva, 4.8/46 kv transformers, switch-gear and (a non-project distribution circuit connection); (5) a 46-kv transmission line extending from the substation about 600 feet to a connection with the Company's Alabaster line; and appurtenant electrical and mechanical facilities; the location, nature and character of which being more specifically shown and described by the the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheets 1 and 2 (FPC Nos. 2436-5 and -6) "General Design."

Exhibit M: Two typewritten pages, "General Description of Project Equipment," filed in the Commission December 30, 1963.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 12,000 horsepower.

Article 31. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, including the reservation and transfer of project lands as may be appropriate for recreational purposes, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this license and every fifth year, thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 32. The Licensee shall discharge a minimum flow of 333 cfs (or the inflow into the reservoir, which ever is less) at all times from the reservoir into the Au Sable River, provided that such flows may be adjusted by further order of the Commission, following studies by and upon recommendation of the Michigan Conservation Department and the U.S. Department of the Interior, after notice and opportunity for hearing.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The Exhibit R referred to in finding (8) above is hereby approved as part of this license, except to the extent that it relates to minimum water flow releases.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-83; TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP66-88

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1966)

On September 23, 1965, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP66-83 an application pursuant to Section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing the exchange of natural gas with Transwestern Pipeline Company (Transwestern) pursuant to an agreement between Panhandle and Transwestern dated April 12, 1965, all as more fully set forth in the application.

On October 1, 1965, Transwestern Pipeline Company (Transwestern), filed in Docket No. CP66-88 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of gas with Panhandle Eastern Pipe Line Company (Panhandle) at a point located in Sherman County, Texas, all as more fully set forth in said application.

Both Panhandle and Transwestern state that the proposed exchange service can be rendered by utilizing the available capacity of both Transwestern and Panhandle. The exchange arrangement will provide for greater utilization of existing facilities, thereby eliminating the need for duplicate facilities, and resulting in savings in cost which would benefit consumers.

Transwestern will receive into its system, gas committed to Panhandle from three wells in Roberts and Hemphill Counties, Texas. These three wells produce a total average volume of less than 1,700 Mcf per day. Panhandle will construct approximately 2.7 miles of lateral connecting these wells to Transwestern under its currently authorized budget certificate. Transwestern will then re-deliver equal volumes to Panhandle through an existing interconnection located in Sherman County, Texas, authorized by order issued June 29, 1965, in Docket Nos. CP65-362 and CP65-370, 33 FPC 1304.

The only additional facilities required by Transwestern will be two minor taps and valves estimated to cost $3,020. The cost of the proposed facilities will be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963, in Docket No. CP63-290 (30 FPC 997).

(3) The proposed construction and operation of facilities and exchange of natural gas by Transwestern and operation of facilities and exchange of natural gas by Panhandle, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities, and exchange of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Transwestern and Panhandle are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Transwestern's and Panhandle's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity are issued to Transwestern and Panhandle authorizing the construction and operation of facilities and the exchange of natural gas by Transwestern and the operation of facilities and exchange of natural gas by Panhandle as more fully described in the applications in these proceedings, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Transwestern shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

WESTMORE DRILLING COMPANY, INC. (OPERATOR), ET AL., DOCKET NO. RI66-96

ORDER GRANTING MOTION IN PART

(Issued January 4, 1966)

Westmore Drilling Company, Inc. (Operator), *et al.* (Westmore) filed on November 15, 1965, a motion requesting that its proposed increased rate of 14¢ per Mcf which is under suspension in Docket No. RI66-96 be made effective as of May 22, 1965. The proposed rate, designated as Supplement No. 14 to Westmore's FPC Gas Rate Schedule No. 2, was tendered for filing on September 9, 1965, and thereafter suspended by order issued October 7, 1965, for one day until October 11, 1965. Concurrently with its motion, Westmore filed an acceptable agreement and undertaking in accordance with the October 7 order. The 14¢ rate is therefore effective subject to refund as of October 11, 1965, under that order.

Westmore received temporary authorization to make the subject sale by order issued May 11, 1965, in Docket No. CI65-918 at an initial rate of 13¢ per Mcf in lieu of the 14¢ initial rate sought in its certificate application. Westmore's application covered acreage obtained by assignment from Champlin Oil & Refining Company (Champlin) which was at that time dedicated under Champlin's FPC Gas Rate Schedule No. 76. Champlin's effective rate under that rate schedule was then 13¢ per Mcf, but Champlin had filed for a rate increase to 14¢ per Mcf which was under suspension in Docket No. RI65-380 until May 22, 1965. The 14¢ initial rate sought by Westmore was not authorized in the May 11 order because there was no justification for placing Westmore in a more favorable position than the assignor. It was indicated there, however, that Westmore could file for an increased rate of 14¢ per Mcf and request a shortened suspension period to coincide with Champlin's suspension period. In response thereto Westmore filed on September 9, 1965, the notice of change which was suspended in the above-entitled proceeding. Prior thereto, Westmore had filed on June 22, 1965, a notice of change which was rejected on July 12, 1965, because it did not contain all of the information and data required under Section 154.94(f).

While there is no justification here for permitting Westmore to collect the 14¢ rate as of May 22, 1965, as requested, we have concluded from a review of this case that Westmore's filing on June 22 could have been used as a basis for a notice of change even though it did not contain all of the information required under the Regulations. We shall therefore reactivate the June 22 filing and shall treat it as though it were suspended in Docket No. RI66-96 for one day from July 22, 1965, the date it would otherwise have become effective (thirty days after filing), and will deem the agreement and undertaking submitted by Westmore concurrently with its motion to be effective as of July 23, 1965, the end of the suspension period herein.

The Commission orders:

For the reasons set forth above, Westmore's proposed 14¢ per Mcf rate is effective, subject to refund under the agreement and undertaking filed by Westmore on November 15, 1965, as of July 23, 1965 in Docket No. RI66-96, and the suspension order of October 7, 1965, in Docket No. RI66-96 is modified to the extent necessary to accord with the views expressed herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ESTABLISHMENT OF FEES TO BE PAID BY APPLICANTS FOR NATURAL GAS PIPELINE COMPANY CERTIFICATES AND OTHER AUTHORIZATIONS, DOCKET NO. R-282

ORDER NO. 317

ESTABLISHING FEES FOR APPLICATIONS FILED WITH THE COMMISSION

(Issued January 5, 1966) *

On September 15, 1965, the Commission issued a notice of proposed rulemaking in this proceeding (30 F.R. 12077, September 22, 1965) wherein it proposed to establish a schedule of filing fees relating to applications by natural gas pipeline companies for certificates of public convenience and necessity as well as applications for exemptions under section 1(c) of the Natural Gas Act, for export or import authority, for an order directing a pipeline company to serve a local distributor or for abandonment authority. Copies of the notice were mailed to the persons who would be directly affected by the fees there proposed as well as to other interested persons, including agencies of the federal and state governments. Of the nine responses to the notice,[1] four[2] expressed opposition. Several of the others proposed changes in applicability but, except for those discussed below, for the most part these submitted clarifying changes many of which we have adopted. All of the comments received have been carefully considered and several of the suggestions adopted. Notwithstanding the comments in opposition, we are prescribing the regulations substantially as proposed in the notice.

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* This order was adopted December 29, 1965, before Chairman Swidler left the Commission. Published in the Federal Register on January 13, 1966 (31 F.R. 430).

[1] Columbia Gas System Service Corporation on behalf of Atlantic Seaboard Corporation; Columbia Gulf Transmission Company; Home Gas Company; Kentucky Gas Transmission Corporation; The Manufacturers Light and Heat Company; The Ohio Fuel Gas Company and United Fuel Gas Company; El Paso Natural Gas Company; Kansas-Nebraska Natural Gas Company, Inc.; Michigan Gas Storage Company; Northern Natural Gas Company; Panhandle Eastern Pipe Line Company; Southern Natural Gas Company; Transcontinental Gas Pipe Line Corporation; Trunkline Gas Company.

[2] Northern Natural, Panhandle Eastern, Transcontinental, and Trunkline.

Several respondents contend that the Commission is without authority to prescribe the fees; that the fees exceed legal limits; that they are contrary to Presidential policy; and grossly inequitable. Some of these arguments were presented to and rejected by the Seventh Circuit Court of Appeals in *Aeronautical Radio Inc.* v. *United States and Federal Communications Commission*, 335 F. 2d 304 (1964), certiorari denied, 379 U.S. 966 (1965). The fees imposed by the Federal Communications Commission in that case, like those we are prescribing, were prescribed under the authority of Title V of the Independent Offices Appropriation Act, 1952 (5 U.S.C. 140) in which, as we said in paragraph 2 of our notice herein, Congress established the policy "that any work, service * * * benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal agency * * * to or for any person * * * except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible." In furtherance of this policy, Congress authorized each agency, including the Federal Power Commission, to prescribe by regulation such fees and charges as are determined to be fair and equitable "taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts." Finally, Congress provided that the regulations prescribed by agencies in the Executive branch shall be as uniform as practicable and subject to such policies as the President may prescribe. The Bureau of the Budget on behalf of the President has issued Circular No. A–25, September 23, 1959, which sets forth general policies for developing an equitable and uniform system of charges for certain Government services and property so as to implement the provisions of the Independent Offices Appropriation Act of 1952.

Aeronautical Radio in our opinion supports our conclusion that the attacks directed at our authority to impose these fees are without force. Before us, however, is a contention which was raised but not decided by the court. Northern Natural argues that we are without authority to impose filing fees —that, at most, we can exact a fee for proceedings in which a certificate is issued but not in connection with those which do not result in the granting of a certificate, license, or other thing of value. The point, however, is not well taken. Section 140 is not so limited in either its purpose or its language. On the contrary, it covers "any work, service, * * * or similar thing of value or utility performed, furnished, provided, granted, prepared or issued," as the basis upon which a fee may be prescribed. Whether or not the certificate or other authorization is eventually granted, the Commission's procedures—which is the "work" performed by us at the instance of the applicant—have been invoked by the filing of the application. Applicants who thus invoke our processes receive the benefit of having their applications processed and considered. This, then, is the governmental operation which Congress determined "shall be self-sustaining to the full extent possible."

The crux of other contentions is that the fees do not fully comply with the standards of 5 U.S.C. 140. We have determined, however, as indicated in the notice, that the regulatory activities of the Commission for which fees are being prescribed convey special benefits to the persons who will be required to pay the fees above and beyond those which accrue to the public at large. Moreover, while the maximum fees prescribed under the formula proposed are by no means nominal, in view of the magnitude of the construction activities to which such fees relate, the impact of even such a relatively high fee is not unreasonable, but rather is fair and equitable, particularly when viewed in the light of the benefit received and the fact that the amount in any event is recoverable as an allowable cost of service.

The formula upon which we have based the fees—our cost of conducting this function, the number of filings and the estimated costs of facilities for which application has been made in recent years—is, to us, entirely reasonable. Having determined that fees should be imposed, it became necessary to find a basis upon which they could be fixed. Several approaches were considered but we concluded that the formula selected was to be preferred to others which might have been adopted. It is designed to fulfill the "self-sustaining" principle required by section 140 insofar as the covered activities are concerned and should within reasonable degrees of tolerance achieve this objective.

The use of a sliding scale of fees geared to the estimated value of the certificate applied for is not in our estimation an unlawful implementation of the statute, which we do not read to require that there be a specific monetary relationship between the fee imposed and the individual benefit received. All the proceedings to which we have applied the formula are generally similar in nature and, within this framework, we are endeavoring to make the processing function self-sustaining by apportioning our costs as fairly and equitably as possible. We recognize, of course, that the work involved in processing an application may, on occasion, exceed that in processing another application for similar authority and some applications require extended hearings, at more cost to the government, while others may be completed more expeditiously. The recipient of the benefit in the latter case, however, may have benefitted from the resolution of issues in prior more costly proceedings and, as such, may fairly be required to contribute to the total cost of the function. Neither of these circumstances would, make our approach to the problem illegal. All things considered, our principal responsibility is the protection of the ultimate consumer through the regulation of the respondents by means of the proceedings to which the fees are attached.

We recognize, of course, that neither our costs nor the dollar value of facilities will remain static and, accordingly, we will revise either the $50 basic fee or the percentage factors or both as may be necessary in the light of subsequent experience.

Numerous clarifying suggestions and other modifications, which we appreciate, were made. Four, of the many changes adopted, deserve particular mention: (1) It will be unnecessary to have checks certified; (2) fees will be imposed only with respect to applications and amendments filed after the effective date of the order; (3) the portion of the fee payable following the grant of a certificate (§ 159.2(b)) is not required to be paid until the certificate is accepted by the applicant; and (4) we agree with Columbia Gas System that § 159.3(c) *Amendments to outstanding certificates* is vague, particularly as to applications to amend temporary certificates or for an extension of time to construct. We believe our addition of the phrase "which have become final" to that section and the reference to the section we have made in § 159.1(h) will make our intention clear.

Among the clarifying changes and modifications suggested by El Paso, one, of the many we have adopted, deserves specific mention: we do intend that applications to acquire, as well as those to construct and operate, facilities shall be covered and have made the several necessary changes in text. El Paso also suggested that the fees for budget-type applications (those filed pursuant to § 157.7) be based upon the actual rather than estimated costs of construction and be paid when the report of construction is made pursuant to that section. We do not adopt this suggestion though we recognize it has some merit. We doubt, however, that the spread between the estimated cost of the proposed facilities and the actual cost of those installed pursuant to the authorization need be as great as it has been in some cases. Applicants may, if they wish, file more realistic estimates and thereby reduce the fee payable.

Three respondents[3] suggested either a refund or the allowance of a credit against future filing fees where the actual cost of constructing authorized facilities is less than the estimated cost. We have not adopted the proposals, not only because no arguments were presented in support but also because we are not convinced that any significant injury will result from the lack of a refund or credit provision.

Some respondents[4] suggest that intervenors who cause, by their participation, an increase in the cost of processing a proceeding should share in that cost by the payment of fees. We think there is a vital distinction between those invoking our jurisdiction to secure a benefit which we are authorized to grant and those properly intervening to set forth their views on the matters which the applicant has put into issue. Though we believe the effect of interventions on cost of processing is irrelevent, the fact remains that while interventions in opposition to the grant of a certificate may increase the cost of processing so, too, do interventions in support. Furthermore, we doubt, as contended in the comments, that the imposition of a reasonable fee on interventions would have the effect of discouraging interventions by parties with adverse economic interests—at the same time it might well inhibit participation by local civic organizations and other groups or individuals who are properly interested in our activities which may affect them. The fees are not intended to reduce government costs by discouraging either interventions or applications but only to reimburse the government for whatever the program may cost.

Panhandle Eastern contends that fees with respect to authorizations involving exportation of gas are unconstitutional as being a burden on foreign commerce prohibited by Art. I, section 9 of the Constitution, which provides that "No Tax or Duty shall be laid on Articles exported from any State." Panhandle relies upon *Fairbank* v. *United States*, 181 U.S. 283; *United States* v. *Hvoslef*, 237 U.S. 1. We conclude otherwise. Assuming, arguendo, that the fee is a tax, the Hvoslef case itself states that the prohibition "is designed to give immunity from taxation to property that is in the actual course of * * * exportation" (237 U.S. at 13). Where the would-be exporter has not yet acquired the necessary authority from us to enter upon the export transaction, the immunity to taxation cannot have attached. Furthermore, the fees here prescribed are not in fact taxes. This is clear from *Memphis Natural Gas Co.* v. *McCanless*, 194 S.W. 2d 476, appeal dismissed 329 U.S. 670, which held that fees exacted for inspection of regulated public utilities and devoted to the regulatory program of the state fall outside the category of Taxes.

Several respondents[5] discussed the accounting requirements proposed in the notice (§ 159.4). We have considered the problems alluded to and agree that in most respects the points are well made. Accordingly, we are revising the section to provide that the fee for applications not involving construction of facilities (§ 159.1) shall be charged to Account 928 Regulatory commission expenses as will all fees relating to the acquisition of facilities. Fees for applications involving construction paid prior to final disposition of the case (§ 159.2(a)) shall be suspended in Account 186. If the certificate is granted, the amounts thus suspended shall be cleared to Account 107, Construction work in progress—Gas, and subsequently cleared to appropriate plant accounts. If the application is denied or the certificate not accepted, the suspended fees shall be cleared to Account 928, Regulatory commission expenses. All amounts paid after a certificate is granted (§159.2(b) and (c)) shall be recorded in Account 107, Construction work in progress—Gas, and subsequently cleared to plant accounts. This revision eliminates the question raised by one respondent which related to the proposed use of Account 302, Franchises and consents. Another respondent suggested that fees paid with respect to abandonment applications be cleared to the appropriate depletion or amortization reserve. We find no justification for this proposal and, further, that it would be contrary to good accounting practice since the fees are not associated with plant.

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[3] Columbia, Southern Natural, and Trunkline.

[4] Kansas-Nebraska, Northern Natural and Transcontinental.

[5] Columbia, El Paso, Northern Natural, Michigan Gas Storage, and Trunkline.

The Commission finds:

In view of the foregoing, and upon consideration of all relevant matters presented, including the arguments, contentions, suggestions and other views expressed in the comments received, it is necessary and appropriate for the purpose of implementing the policies and standards set out in 5 U.S.C. 140 and Bureau of the Budget Circular No. A-25, and for the administration of the Natural Gas Act, that the Regulations Under the Natural Gas Act be amended as herein provided.

The Commission, acting pursuant to the authority set forth in Part 159, herein prescribed, and the general policies established in Bureau of the Budget Circular No. A-25, issued September 23, 1959, *orders:*

(A) Subchapter E, Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new Part 159, to read as follows:

Part 159—Fees for Certain Applications Filed Pursuant to the Natural Gas Act

§ 159.1 Applications not involving construction or acquisition of facilities.
§ 159.2 Applications involving construction or acquisition of facilities.
§ 159.3 Miscellaneous.
§ 159.4 Accounting for fees paid pursuant to Part 159.

Authority: Part 159 issued under sec. 16, 52 Stat. 830; 15 U.S.C. 7170 and title V, sec. 501, 65 Stat. 290, 5 U.S.C. 140. Interpret or apply secs. 1(c), 3, 7, 52 Stat. 822, 824; 56 Stat. 83; 68 Stat. 36, 15 U.S.C. 717(c), 717b, 717f; Ex. Or. 10485, 18 F.R. 5397; sec. 5, 67 Stat. 464, 43 U.S.C. 1334(c).

§ 159.1 Applications not involving construction or acquisition of facilities. A filing fee of $50.00 shall accompany each of the following:

(a) Applications for exemption under section 1(c) of the Act;

(b) Applications to import or export natural gas under section 3 of the Act;

(c) Applications for permits under Executive Order 10485;

(d) Applications for, and petitions to intervene in proceedings requesting orders under section 7(a) of the Act;

(e) Applications for permission and approval to abandon under section 7(b) of the Act;

(f) Applications for certificates of public convenience and necessity under sections 7(c) and (d) of the Act;

(g) Applications for determinations by the Commission under section 5 of the Outer Continental Shelf Lands Act; and

(h) Amendments to any of the applications listed in (a) through (g) hereof and those referred to in § 159.3(c).

§ 159.2 Applications involving construction or acquisition of facilities.

In addition to the fees prescribed by § 159.1, applicants for a certificate of public convenience and necessity under sections 7(c) and (d) of the Act to construct and operate or acquire and operate facilities shall pay the following fees:

(a) Within 30 days following issuance of Notice of Application, an amount equal to 5/100 of one percent (0.0005) of the estimated cost of construction of new facilities or of facilities to be acquired;

(b) Within 30 days following grant of the certificate, an amount equal to 10/100 of one percent (0.001) of the estimated cost of construction of new facilities or of facilities to be acquired; unless applicant does not accept the certificate;

(c) If an amendment to a pending application increases the total estimated cost of construction of new facilities or of facilities to be acquired, an additional amount, computed with respect to the increase as provided in paragraph (a) hereof, shall be paid; and

(d) If the actual cost of construction of new facilities or of facilities to be acquired exceeds the estimated cost thereof, the statement of actual cost, required to be submitted by § 157.20(c)(4) and (d)(3) of this chapter, shall be accompanied by an amount equal to 15/100 of one percent (0.0015) of the excess of actual cost (plus estimated cost of facilities for which actual cost is not then recorded on the books of applicant) above estimated cost.

§ 159.3 Miscellaneous.

(a) *Method of Payment.* Fee payments shall be by check or money order payable to the Treasurer of the United States. No fees shall be refunded.

(b) *Exemption.* The provisions of this part shall not apply to independent producers as defined in § 154.91(a) of this chapter.

(c) *Amendments to outstanding certificates.* Applications to amend outstanding certificates, authorizations or orders, which have become final, will be treated as initial applications for the purposes of this part.

§ 159.4 Accounting for fees paid pursuant to Part 159.

A natural gas company subject to the provisions of this part shall account for the fees paid as follows:

(a) The fee for applications not involving the construction of facilities ($50.00 for each application or amendment thereto) shall be charged to Account 928, Regulatory commission expenses.

(b) The fee for applications involving construction of facilities shall be accounted for as follows:

(1) All amounts paid prior to final disposition of the application shall be charged to Account 186, Miscellaneous deferred debits: (i) If the certificate is granted and accepted, the amounts recorded in Account 186 shall be cleared to Account 107, Construction work in progress—Gas, and subsequently cleared to the appropriate plant accounts; (ii) if the certificate requested is not granted or is not

accepted by the applicant, the fees recorded in Account 186 shall be cleared to Account 928, Regulatory commission expenses.

(2) All amounts paid after grant of the certificate application shall be recorded in Account 107, Construction work in progress—Gas, and subsequently cleared to the appropriate plant accounts.

(c) All amounts paid in connection with applications involving the acquisition of facilities shall be charged to Account 928, Regulatory commission expenses.

(B) The said Subchapter E is further amended by amending §§ 152.3, 153.3, 153.11, 156.3(b), 157.6(b) and adding a new paragraph (f) to § 157.20 as follows:

§ 152.3 Contents of application; filing fee.

Every application shall be accompanied by the fee prescribed in part 159 of this subchapter and shall set forth in the order indicated the following:

* * *

§ 153.3 Contents of application; filing fee.

Every application shall be accompanied by the fee prescribed in part 159 of this subchapter and shall set forth in the order indicated the following:

* * *

§ 153.11 Contents of application; number of copies; filing fee.

An original and 9 conformed copies of an application under this section shall be furnished to the Commission and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter. The Commission reserves the right to request additional copies. Every application shall be accompanied by the fee prescribed in part 159 of this subchapter and shall set forth in the order indicated, the following:

* * *

§ 156.3 Applications; number of copies; general requirements.

* * *

(b) *General content of application; filing fee.* Except as provided in paragraph (d) of this section, each application shall be accompanied by the fee prescribed in part 159 of this subchapter and shall set forth the following information:

§ 157.6 Applications; number of copies; general requirements.

* * *

(b) *General content of application; filing fee.* Each application filed shall be accompanied by the fee prescribed in part 159 of this subchapter and shall set forth the following information:

§ 157.20 General conditions applicable to certificates.

* * *

(f) The certificate herein issued shall be without force and effect unless the fees prescribed by § 159.2(b) and § 159.2(d), if any, of the Regulations Under the Natural Gas Act have been paid in accordance with the requirements thereof.

(C) In view of the accounting requirements prescribed in the new § 159.4, we will by later order revise the texts of Accounts 107, 186 and 928, referred to therein, so as to make appropriate reference to those requirements.

(D) The amendments herein prescribed shall be effective on February 6, 1966, and shall apply with respect to applications and amendments filed thereafter.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

[LETTER—ORDER REJECTING REFUND REPORT]

January 5, 1966.*

THE MANUFACTURERS LIGHT AND HEAT COMPANY,
800 Union Trust Building
Pittsburgh, Pennsylvania.
Attention: Mr. C. A. Massa, Vice President.

GENTLEMEN: Reference is made to your report of refunds totaling $8,653,016.78 filed on January 25, 1965. The refunds reported therein are not properly computed since the report fails to allocate all refunds received as required by the settlement agreement and order in Docket No. G–20510. The report is not acceptable and is hereby rejected.

The refunds do not satisfactorily comply with Paragraph (E) of the order issued March 30, 1961, 25 FPC 595, or with the settlement agreement in Docket No. G–20510, both of which require Manufacturers to refund to its wholesale customers the "appropriately allocable" share of supplier refunds received. Manufacturers' computation of refunds in this docket seeks to apply the same method specifically provided in the prior settlement agreement in Docket No. G–12197. The impropriety of applying the identical method of computation in both settlements is clear. The refund provision in the Docket No. G–20510 does not state that the refund computation is to be made through adjustment of the stipulated cost of service as is explicitly provided in the settlement in Docket No. G–12197. Further, where it was intended in G–20510 that a computation be made through adjustment of the stipulated cost of service, such intent was specifically and explicitly stated. See Article III, Section 1 of the G–20510 settlement agreement relating to rate reductions. The result is that Manufacturers' report of refunds improperly fails to allocate among its customers $1,477,470.03 of the total refund received from Atlantic Seaboard Corporation and United Fuel Gas Company. The refund, therefore, is not properly allocated and is disapproved.

Manufacturers is hereby directed to properly allocate among its customers all of the refunds received from its suppliers and to make refund to jurisdictional customers in compliance with Paragraph (E) of the order issued March 30, 1961 in Docket No. G–20510.

By direction of the Commission.

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*Rehearing denied March 4, 1966, 35 FPC 328. Affirmed, *The Manufacturers Light and Heat Co.* v. *F.P.C.*, 374 F. 2d 88 (CA3–1967).

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, PROJECT NO. 516

ORDER APPROVING PLAN FOR PUBLIC ACCESS

(Issued January 5, 1966)*

On January 14, 1965, South Carolina Electric & Gas Company (Licensee) filed an application, as amended June 4, 1965, and November 5, 1965, for approval of a public access plan as part of its license for Project No. 516, known as the Saluda Project and located on the Saluda River at Breher's Shoals, South Carolina.

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* This order was adopted December 9, 1965 before Chairman Swidler left the Commission.

The plan consists of nine maps, (FPC Nos. 516–194 through 202) which describe the location and boundaries of public access areas, including facilities, at two existing and six proposed sites varying in size from 1.61 acres to 8.86 acres, adjacent to the reservoir, three of which lie partly without the project boundary. We shall provide in this order that Exhibit K be amended revising the project boundary to include these three areas within the project boundary. Of the eight sites, four are located on the northern side, and four on the southern side of the reservoir which is 20 miles long and covers approximately 51,000 acres. These sites will supplement thirty-five boat landings operated by concessionaires serving the public and will provide free public access to the reservoir during the remaining period of the license which expires in 1977. By letter dated October 5, 1965, the Licensee advised that upon approval of the plan by the Commission, it will proceed to develop these sites in cooperation with the State Parks Division of the South Carolina Forestry Commission; and, that if usage of the sites indicates that additional facilities are needed it will provide them.

The Commission finds:

(1) The public access plan submitted by Licensee should be approved as part of the license.

(2) Exhibit K should be amended to identify the public access areas and to include all the areas within the project boundary.

The Commission orders:

(A) The aforesaid public access plan is approved as part of the license for Project No. 516.

(B) Exhibit K is amended to identify the public access areas and to include all the areas within the project boundary.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the foregoing order. In acknowledgment of this acceptance of the foregoing order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. CP66–55 AND RP66–18

FINDINGS AND ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ELIMINATING THE NECESSITY FOR FURTHER HEARING

(Issued January 5, 1966)

On November 30, 1965, 34 FPC 1403, a certificate of public convenience and necessity was issued to Tennessee Gas Transmission Company (Tennessee) to sell and deliver to Pennsylvania Gas and Water Company (Penn Gas and Water) a Daily Storage Quantity of 13,500 Mcf and a Winter Storage Quantity of 1,012,500 Mcf (at 15.025 psia). The Commission authorized such service for one year and provided for a future hearing in Docket No. RP66–18 to determine whether the new rate schedule SS-E is compensatory and bears its fair share of Tennessee's cost of service.

On December 6, 1965, Tennessee filed a Petition for Rehearing requesting that the order of November 30, 1965 be modified to certificate the storage service to Penn Gas and Water on a permanent rather than a one-year basis, and objecting to the rate hearing provided for in Docket No. RP66-18. Tennessee refused to accept the certificate as conditioned and requested a modification in volumes to be supplied Penn Gas and Water.

On December 7, 1965, Penn Gas and Water applied for a rehearing and for emergency relief in the nature of requesting the Commission to direct Tennessee to provide Penn Gas and Water with emergency gas under its E-4 Schedule. Penn Gas and Water also objected to the one-year SS-E storage service because to do so would require a switch over from its present G service to CD-4 service with no assurance it could revert to G service if the SS-E schedule was not continued after one year.

On December 13, 1965, Tennessee filed a supplement to its Petition for Rehearing in which it opposed the E-4 service to Penn Gas and Water and submitted copies of letters from all of its SS-5 customers, Consolidated Edison of New York, Public Service Electric and Gas Company, Orange and Rockland Utilities, Brooklyn Union Gas Company, Central Hudson Gas & Electric Corporation, and Long Island Lighting Company, in which each indicated that it would accept a switch over of its present SS-5 service to SS-E service.

At the time of the original order in these proceedings, it was unclear whether and when the potential discrimination between those customers to be offered the new SS-E storage service and those who were receiving service under the older, and less advantageous SS-5 storage service schedule would be eliminated. Despite this fact, the SS-E service was authorized for one year to ease the emergency situation confronting Penn Gas and Water. Under the hereinbefore described circumstances, the one-year limitation on authorization of the new SS-E rate can be eliminated and the potential discriminatory problem avoided by providing that the SS-E rate may be put into effect, without limitation as to time, as soon as Tennessee makes it available, without restriction, throughout Zones 4 and 5, with the further condition that Tennessee will withdraw its SS-5 rate within twelve months from the date of putting the SS-E rate into effect.

The action in setting the SS-E rate for hearing as to its conformity with the standards of Sections 4 and 5 of the Natural Gas Act has been reconsidered and found unnecessary. While this action herein should not be understood as in any way determining that the rate level or design necessarily is just and reasonable, it is concluded that there is no necessity for setting the matter for hearing.

The Commission finds:

(1) Penn Gas and Water cannot economically and practically accept Tennessee's SS-E storage service for one year because Penn Gas and Water is not a contract demand (CD) customer but a general service (G) customer.

(2) Penn Gas and Water's request for E-4 service is denied as unnecessary because of the order hereinafter issued.

(3) A rate hearing in Docket No. RP66-18 is now unnecessary because all of Tennessee's SS-5 customers will be SS-E customers, eliminating the dual rate schedule to New York and New Jersey storage customers.

(4) Paragraph (B) of the November 30, 1965 order in this docket reserves to all parties the right to a future hearing, if necessary, as to the reasonableness or propriety of Tennessee's storage rate schedule SS-E.

The Commission orders:

(A) The certificate issued to Tennessee Gas Transmission Company on November 30, 1965 in Docket No. CP66–55 is amended and modified as herein ordered.

(B) The certificate issued in paragraph (A) of the November 30, 1965 order is amended by striking the last sentence thereof; the certificate is hereby made permanent.

(C) Tennessee is hereby authorized to place into effect its proposed SS–E Rate Schedule, without limitation as to time, as soon as such Schedule has been made available, without restriction, throughout Tennessee's Rate Zones 4 and 5 and provided that Tennessee within twelve months from the date of putting the SS–E Rate Schedule into effect shall have cancelled its existing SS–5 Rate Schedule.

(D) Tennessee within one year of the date of this order shall have cancelled its existing SS–5 Rate Schedule.

(E) Tennessee is authorized to provide the following volumes of gas to Penn Gas and Water (in Mcf at 14.73 psia):

	Contract demand	Daily storage quantity	Winter storage quantity
1965–1966	23,052	12,980	980,565
1966–1967	24,990	13,770	1,032,750

(F) Paragraphs (F), (H), (I) and (J) in the November 30, 1965 order are struck in their entirety and provisions for a future hearing are cancelled.

(G) In all other respects the certificate in Docket No. CP66–55 and the findings and order of November 30, 1965 shall remain in full force and effect.

OPINION NO. 484

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–211; SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. CI62–825, CI65–1355; PHILLIPS PETROLEUM COMPANY, DOCKET NO. CI64–719; UNION OIL COMPANY OF CALIFORNIA (SUCCESSOR TO THE PURE OIL COMPANY), DOCKET NO. CI64–1085; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI64–1130; GULF OIL CORPORATION, DOCKET NO. CI64–1153; SKELLY OIL COMPANY, DOCKET NO. CI64–1225; MIDWEST OIL CORPORATION, DOCKET NO. CI64–1429; DALCO OIL COMPANY, DOCKET NO. CI64–1442; W. WATSON LAFORCE, DOCKET NO. CI65–61; GEORGE T. ABELL, DOCKET NO. CI65–878; M.B. RUDMAN, ET AL., DOCKET NO. CI65–930

OPINION AND ORDER ISSUING CERTIFICATES AND DENYING MOTION FOR SEVERANCE

(Issued January 6, 1966)[*]

Syllabus

1. Claimed premium qualities offering high pressure, etc. and contracts offering special benefits to pipeline purchaser do not entitle producer-applicants to price bonus above applicable area rate ceiling. PP. 43, 44.

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[*] This opinion was adopted December 29, 1965, before Chairman Swidler left the Commission. See order issued March 4, 1966 denying application for rehearing and stay, 35 FPC 321. Remanded, *Phillips Petroleum Co. v. F.P.C.*, 377 F. 2d 278 (CA10–1967); Judgment vacated and remanded to CA10 in light of *Permian*, 391 U.S. 365. Petition for Review denied, 405 F. 2d 6 (CA10–1969).

2. No provision was made in *Opinion No. 468* for premium price for substantial amounts of gas delivered above 500 pounds pressure. P. 44.
3. Instant proceeding is not proper one for amending quality standards set forth in *Permian Basin*. P. 44.
4. Introduction in certificate proceeding of evidence directed to changing applicable area rate, by introduction of new quality standards or otherwise, will not be permitted. P. 44.
5. Proper forum for determining any change in area rates, including quality adjustments, is in area rate proceeding. P. 44.
6. Permian area quality standards (with exception of Btu content) are minimum standards only. P. 44.
7. Price of gas should not vary in accordance with its volume, nor is a premium price justifiable by concentration of gas at a small number of delivery points. P. 45.
8. It is neither necessary nor proper to consider cost evidence in connection with determination of price to be charged for gas under Section 7 certificate—Examiner's exclusion of such evidence was correct. P. 45.
9. In determining whether residue gas derived from gas-well gas is old or new gas, the date on face of contract is controlling—extrinsic evidence to show a later execution date should not be allowed. P. 46.
10. Rule adopted in *Opinion No. 468–A*, classifying contracts for new or old gas on basis of "date set forth in contract" is supported by common sense and only rule which can be practically administered. P. 46.
11. Commission spells out procedure for fixing price variations due to quality deficiencies as to applications filed prior and subsequent to Permian Basin. P. 47.
12. Moratorium imposed on all price increase filings above applicable area rates before January 1, 1968. P. 47.
13. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity and *denies* motion for severance.

David F. Mackief, E. J. Najaiko, Malcolm T. Dungan, Jeremiah C. Collins for El Paso Natural Gas Company.

R. D. Haworth, D. L. Smith, Tom P. Hamill for Socony Mobil Oil Company, Inc.

Kenneth Heady, John R. Rebman, Stanley L. Cunningham for Phillips Petroleum Company.

John C. Snodgrass for Union Oil Co. of California.

J. R. McChesney for The Pure Oil Company, a Division of Union Oil Company of California.

F. T. Searls, M. H. Furbush, John S. Cooper, Stanley T. Skinner for Pacific Gas & Electric Company.

Richard J. Dent, Sherman S. Poland, James D. McKinney, Jr. for Skelly Oil Company.

James D. McKinney, Jr., Bernard A. Foster, Jr., Stuart J. Scott for The Atlantic Refining Company.

Warren M. Sparks, Donald R. Arnett for Gulf Oil Corporation.

Mary Moran Pagalich, Roderick B. Cassidy, J. C. Simpson, Lawrence Garcia for People of the State of California and Public Utilities Commission of the State of California.

John D. Ketcham, Charles E. McGee for George T. Abell.

William L. Cole, John Ormosa, Milford Springer for Southern California Gas Company, Southern Counties Gas Company of California, Pacific Lighting Gas Company.

R. W. Howell Jr. for Dalco Oil Company.

Harry S. Littman, Jack Werner, Harold Talisman, Robert Shaw, W. C. Braden, Jr., John Ferguson for Gulf Pacific Pipeline Company.

David S. Lichtenstein for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

Eleven producers[1] of natural gas have applied for certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act (Act) authorizing the sale in interstate commerce of natural gas from the Delaware Basin in western Texas. By orders issued March 2, April 27, and June 14, 1965, these applications, as amended and supplemented, were consolidated in this proceeding with two applications by El Paso Natural Gas Company (El Paso) for authorization to construct and operate pipeline facilities to receive and transmit this gas. By order of June 14, 1965, 33 FPC 1260, the Commission granted intervention to the People of the State of California and the Public Utility Commission of the State of California, (jointly referred to as Cal-PUC) as well as to four California gas distributors[2] (Distributor Intervenors).

After a prehearing conference on August 26, 1965, a hearing was held on October 19 and 20, 1965. At the close of the hearing, counsel for joint intervenors, Southern California Gas Company and Southern Counties Gas Company, moved that the intermediate decision be waived. On October 25, 1965, the presiding examiner referred the unopposed motion to the Commission, which granted it on November 8, 1965. The proceedings are now before us for decision on the merits.

The Applications of El Paso

El Paso filed its applications in Docket Nos. CP62-176 and CP64-211 on January 30, 1962, and March 23, 1964, respectively.

El Paso seeks authorization to construct and operate facilities, including pipeline and well ties (with meter runs, dehydrators, and meters) to enable it to receive from the various producers herein natural gas to be purchased in the Gomez, Worsham (Barstow), Coyanosa, and Waha fields in the Delaware Basin area in Pecos and Reeves Counties, Texas, included in Texas Railroad District No. 8 and within the limits of the Permian Basin Area as defined by the Commission.[3] The reserves involved are stated to aggregate approximately 2.1 trillion cubic feet, and to be required for the purpose of augmenting El Paso's overall system gas reserves. Temporary certificates were issued September 24, 1962 and December 11, 1964, authorizing the construction and operation of portions of El Paso's proposed facilities.

All participants in these proceedings support El Paso's application for certificates of public convenience and necessity authorizing the construction of the facilities in question. It appears that the new gas supplies are in close proximity to El Paso's existing facilities. They will be of particular value to El Paso in that the gas-well gas and residue gas derived from gas-well gas provide suitable diversification in the pipeline's gas supply, which now consists largely of casinghead gas and residue gas derived therefrom. The gas-well gas sources will provide El Paso with flexibility and enable it to meet peak demands which may occur in periods when the supply of casinghead gas may be curtailed. Lease reserves are adequate and warrant the construction of El Paso's proposed facilities; the proposed auxiliary facilities are within the authorization conferred by § 2.55(a) of the Commission's General Policy and Interpretations; El Paso is able and willing to do the acts and to perform the service proposed and to conform with the Act and all valid rules and regulations promulgated thereunder. Accordingly, permanent certificates will be issued to El Paso.

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[1] Socony Mobil Oil Company, Inc. (Socony Mobil), Docket Nos. CI62-825, CI65-1355; Phillips Petroleum Company (Phillips), CI64-719; Union Oil Company of California (Successor to the Pure Oil Company) (Union), CI64-1085; The Atlantic Refining Company, (Atlantic), CI64-1130; Gulf Oil Corporation (Gulf), CI64-1153; Skelly Oil Co., (Skelly), Docket No. CI64-1225; Midwest Oil Corporation, CI64-1429; Dalco Oil Co. (Dalco), CI64-1442; W. Watson LaForce, CI65-61; George T. Abell, (Abell) CI65-878; and M.B. Rudman, *et al.*, CI65-930.

[2] San Diego Gas and Electric Company, Pacific Gas and Electric Company, Southern California Gas Company and Southern Counties Gas Company.

[3] Some minor miscellaneous services behind the Waha residue gas sales are in Loving County, which is also within District No. 8 and the Permian Basin Area.

Gulf Pacific Pipeline Company (Gulf Pacific) appeared in this proceeding for the purpose of protecting any interests which might be prejudiced in *Transwestern Pipeline Company, et al.*, Docket No. CP63-204, *et al.* Gulf Pacific has no objection to issuance of the present certificates so long as it is stated that the issuance of the present certificates shall not prejudice the determinations as to the applications in the other proceeding. El Paso has stated that regardless of the outcome in the other proceeding it would be in the public interest to construct and operate the present facilities. The issuance of certificates in the present proceeding will not prejudice the determination in *Transwestern Pipeline Company, et al.*, Docket Nos. CP63-204 and CP64-91, *Gulf Pacific Pipeline Company*, Docket No. CP63-223 and *El Paso Natural Gas Company*, Docket No. CP64-76.

The Producer Applications

These are the first producer certificate applications for the sale of gas from the Permian Basin to be considered after formal hearing by this Commission since the decision in the Permian Basin Area Rate Proceeding, Docket No. AR61-1, Opinion Nos. 468 and 468-A, 34 FPC 159, 1068. All seek permanent certificates. Temporary certificates to Socony Mobil were issued or amended May 25, 1962, January 30, 1962, June 11, 1964, July 10, 1964, and December 11, 1964. No temporary certificate has been issued to any other producer-applicant therein.

The principal contention of the producer-applicants is that because their gas offers special premium qualities and because their contracts offer special benefits to the purchaser, the gas sold under these contracts should command a price in excess of that which would be permitted under the quality standards laid down in Opinion Nos. 468 and 468-A. In this contention the producers are supported by El Paso but opposed by the intervenors and the Commission staff.

The premium qualities which the producers contend entitle them to a price above the applicable area rate are high pressure ranging from 985 to 1200 pounds per square inch, great volume, concentrated delivery points, unusual purity, unusually good deliverability, and the availability of the gas for "swing" purposes. This being gas-well gas of high pressure and purity, it can be utilized when El Paso's residue supplies from casinghead gas are lagging, especially in winter when the demand for gas is high. The contract features which would, it is contended, confer unusual benefits upon the purchaser are the notably low amounts which El Paso is required to take in the early years, and take-or-pay makeup clauses extending over the life of the contracts. A witness from El Paso testified that this was the most unique package of gas ever offered to El Paso. While all gas-well gas provides some "swing", the pressure, volume and absence of diluents cause this gas to have greater swing benefits than any other in the area.

According to the brief of Union, which was adopted by five other producers[4] the principal justification for a premium price lies in the unusually high pressure of the gas. Delivery pressures would range from 985 to 1200 pounds. One thousand pounds pressure is not unusual pressure for gas-well gas. Even 1200 pounds is not uncommon in the United States, although it is stated to be higher pressure than that of any other gas available to El Paso in the Permian Basin.[5] We do not feel that a pressure of 985 to 1200 pounds is so unusual or of such unusual benefit to the purchaser as to justify a price bonus.

It may well be that gas sold at these pressures in the Delaware Basin will be of greater benefit to El Paso than if it were to be provided at the 500 pound minimum standard for pipeline quality gas set forth in Opinion No. 468–A; since the wells in question are located in an area in which El Paso does not presently have pipeline facilities, the new pipeline facilities which will be constructed to take the gas may be cheaper, at least initially, than if the gas were to be delivered at lower pressure. However, the 500 pound pressure limits below which we stated in the Permian decision would require price differentials, was not established because we believed that gas at pressures above 500 pounds was entitled to premium rates, but rather because it appeared that in Permian a large percentage of the existing pipeline facilities has been constructed to receive gas at about this pressure, and we did not believe that producers who had sold gas at pressures geared to the available pipeline facilities should be penalized therefor. Thus no provision was made under Opinion No. 468 for premium price for the substantial amounts of gas being delivered at pressures above 500 pounds.

This proceeding is not the proper one for any attempt to amend the standards set forth in the Permian Basin area rate proceeding. We stated in Opinion No. 468: "It will therefore be our policy to certificate new sales of gas in the future at initial prices no higher than the just and reasonable price for new gas * * * unless * * * the Commission decides to reopen *this proceeding* to consider whether a different rate or rates should be adopted. * * * We expect that the just and reasonable rate for new gas would constitute the maximum price at which new gas would be initially certified, the so-called "in-line" price, until the just and reasonable rate is changed by the Commission." [*Supra*, pp. 230, 231, emphasis supplied].

In the Order Issuing Certificates of August 5, 1965, 34 FPC 418, we reiterated: "As we stated in Opinion No. 468, the just and reasonable rate fixed therein constitutes the "in-line" price required by the public convenience and necessity in granting permanent certificates."

To permit the introduction in the certificate proceeding of evidence directed to obtaining changes in the applicable area rate, whether by the introduction of new quality standards or otherwise, would give rise to delay in the processing of certificates, will result in a great and unnecessary administrative burden, and, in the long run, cause unnecessary expense to the producers. The proper forum for determining any change in area rates, including quality adjustments, is in the area rate proceeding. It should be emphasized, moreover, that these standards (with the exception of Btu content) are minimum standards only. Nor, for the reasons set forth above, do we believe that the present applications signal a situation in which institution of a supplemental proceeding in Docket No. AR61–1 to revise the area rate to provide a premium for gas sold at more than 500 pounds pressure (or sold at the particular pressures involved here) would be warranted or where, pending such a proceeding, we might wish to exercise our discretion to certificate the present sales at prices in excess of the existing Permian ceilings, subject to refund.

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[4] Atlantic, Gulf, Skelly, Dalco, and Abell.

[5] The applicable area rates for new gas-well gas were established largely on the basis of the national average cost for new gas-well gas.

Union has stated that if a certificate at a premium price is denied it will revise its contract with El Paso to remove some of the unusual benefits conferred by that contract and will deliver the gas at a lower pressure than twelve hundred pounds. It is Union's privilege to bargain with El Paso, subject to approval by this Commission to make sure that grant of a certificate to sell gas pursuant to the modified contract at the price then proposed meets the standards of Section 7 of the Act.

Socony Mobil, delivering the residue gas involved in Docket No. CI65–1355 at one thousand pounds pressure, points out that its contract calls for delivery of large volumes of gas (138,700 Mcf daily) concentrated at only two delivery points. We do not think that the price of gas should vary in accordance with its volume, or that a premium price is justified by the concentration of the gas at a small number of delivery points. Socony Mobil gathers this gas for processing at these points for its own benefit—that is, the liquids which Socony Mobil extracts from the gas before delivering the residue to El Paso. Opinion No. 468 makes no provision for an increase in the applicable area rate by reason of either concentrated delivery points or large volumes delivered.

The Exclusion of Cost Evidence

Union and other producers tendered as evidence in this proceeding a cost study prepared by Dr. Stephen F. Sherwin (Tr. 177–190) dealing with the cost of new gas-well gas. His testimony and related Exhibit 23 were excluded by the presiding examiner. It is now contended that the exclusion of the Sherwin testimony and exhibit was error and that any reliance on a 1960-based cost to establish a price for gas to be sold in 1966 is unlawful under the Act and a deprivation of property without due process of law.

It has been determined by this Commission that it is neither necessary nor proper to consider cost evidence in connection with the determination of the price to be charged and collected for gas pursuant to a certificate issued under Section 7 of the Act. The Supreme Court has recently upheld this determination in *United Gas Improvement Co.* v. *Callery Properties, Inc.*, 382 U.S. 223, (1965), in which the Court stated:

> * * * We believe the Commission can properly conclude under § 7 that adequate protection to the public interest requires as an interim measure that gas not enter the interstate market at prices higher than existing levels. To consider in this § 7 proceeding the mass of evidence relevant to the fixing of just and reasonable rates under § 5 might in practical effect render nugatory any effort to fix initial prices. * * * (p. 227, 228).

As we stated in Opinion No. 468 and in the Order Issuing Certificates of the same date the just and reasonable area rates fixed in Opinion No. 468 and Opinion No. 468–A, as amended, constitute the "in-line" prices required by the public convenience and necessity in granting a permanent certificate.

The presiding examiner's exclusion of the proffered cost evidence was correct and must be sustained.

Motion for Severance

On October 25, 1965, Socony Mobil filed a motion to sever its Docket No. CI62–825, relating to sales from the Rojas Cabalas Field, from the above-captioned consolidated proceeding and for issuance of a permanent certificate of public convenience and necessity. In this motion for severance, and again in its initial brief Socony Mobil indicated that although the initial price provided by the gas purchase contract is 18¢ per Mcf at 14.65 psia, it is willing to accept a permanent certificate at the maximum price for new gas-well gas of this quality as defined in Opinion No. 468. That Opinion provides a maximum price for new gas of this quality of gas-well gas of 16.5¢ per Mcf in the Railroad District from which the gas herein is to be sold. The applicable area rate under contracts dated prior to January 1, 1961, is 14.5¢ per Mcf.

Although the gas purchase contract with El Paso involved herein bears a date of December 28, 1960, Socony Mobil maintains that the contract was actually "executed" by it on March 2, 1961, and by El Paso on March 3, 1961, which dates are subsequent to the cutoff date for new gas-well gas as defined in Opinion No. 468 (at p. 239), *i.e.*, January 1, 1961. In Opinion No. 468-A the Commission indicates that it had chosen "the date set forth in the contract" as determining whether contracts should be classified as contracts for new or old gas.[6]

An examination of the gas purchase agreement entered into between El Paso and Socony Mobil shows the signatures of the vice president of El Paso and the attorney-in-fact of Socony Mobil set forth at the end of the agreement after the final paragraph, which states that "The parties hereto have caused this agreement to be duly executed in duplicate originals, on this the day and year first above written." The reference, of course, is to the date in the first paragraph of the agreement, *i.e.*, December 28, 1960.

The attorney-in-fact for Socony Mobil by affidavit of September 17, 1965, states that although the agreement bears the date of December 28, 1960, material changes in the original "proposals" of the parties were negotiated during the months of January and February 1961, and that the contract was not "executed" by him on behalf of Socony Mobil until after February 28, 1961, the exact date of execution being on or about March 2, 1961.

Socony Mobil has submitted copies of nine letters exchanged between El Paso and Socony Mobil purporting to show that the contract negotiations between the parties were continuing on and after January 1, 1961. No matter what construction be placed on the correspondence between the parties subsequent to December 28, 1960, the fact remains that we are faced with a signed document dated December 28, 1960. Strictly speaking, Socony Mobil does not assert that there is any misunderstanding *between the parties* as to the terms of the agreement, including the date set forth therein. In other words, Socony Mobil does not maintain that there was any mistake as to the intention of the parties to date the contract as it appears upon its face.

We feel that to allow the employment of extrinsic evidence to change the date which appears on the face of a contract would open the door to unverifiable assertions as to the date when a contract was "executed". The latter is a conclusion of law—not a statement of fact. In the last analysis, there is a question of public policy involved herein, which would make it not only hazardous, but administratively impossible to accept extrinsic evidence to show that the date of "execution" is later than the date which appears on the contract.

We believe that the rule adopted in Opinion No. 468-A (at p. 1075) which classifies contracts for new or old gas on the basis of "the date set forth in the contract" is one which is supported by common sense, and the only rule which can be administered practically without the necessity for investigating the unique circumstances surrounding every contract submitted to the Commission. That date is precise, definite, and certain. It is conceded that the gas in question is of pipeline quality in all respects and a permanent certificate will be issued to Socony Mobil at the full area base rate of 14.5¢ per Mcf applicable to flowing gas.

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[6] In their Joint Application for Rehearing, the producers attacked the contract date as the cutoff date for the maximum new gas price and argued for the date when deliveries are actually begun, *i.e.*, when the gas was first committed to interstate commerce. This contention was rejected in Opinion No. 468-A, at p. 1075.

Procedure for Fixing Price Variations Due to Quality Deficiencies

The question remains as to the procedure to be followed in establishing variations from the base area rates resulting from the quality deficiencies of gas to be sold by producer applicants other than Socony Mobil. We think in the case of certificate applications filed subsequent to the issuance of Opinion Nos. 468 and 468–A that the necessary information should be filed at the same time as the application itself. The applications in this proceeding, however, were filed prior to the issuance of those opinions and the applicants could have no way of knowing precisely what material should be filed. Accordingly, we think that the same procedure should be followed with respect to these applications as was laid down in the Order Issuing Certificates issued August 5, 1965, contemporaneously with Opinion No. 468. We agree that notice should be given to all interested participants as to the material upon which the ultimate price determinations will be based. Accordingly, the order herein will direct that each producer-applicant shall serve upon Distributor Intervenors and upon Cal-PUC, as well as all other participants who request it, copies of material filed for the purpose of establishing price variations resulting from quality deficiencies. In order to allow the producer-applicants to be aware of the initial price allowed them before accepting their certificates, the time for acceptance of the certificates will be extended until 30 days after the price, including adjustments for quality deviations, is finally determined.

Moratorium

We think that the public convenience and necessity requires the imposition of a moratorium upon all filings by the producer-applicants of increases in price in excess of the applicable area rates before January 1, 1968. This moratorium will not apply to price increases which do not exceed the applicable area rates, and if area rates are adjusted upward prior to January 1, 1968, the producer-applicants will be permitted to file for increases which do not exceed the new areas rates or their permitted contract rates, whichever is lower.

The Commission finds:

(1) El Paso is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Each producer applicant herein for a certificate of public convenience and necessity is a "natural-gas company" within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities therefor are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applications for certificates of public convenience and necessity, in due form, have been filed by all applicants herein.

(4) The amount of lease reserves is adequate to warrant the construction of the facilities proposed for their connection.

(5) The need of El Paso for the facilities and reserves proposed herein is consistent with the market and reserve showing presented by El Paso in the proceeding at Docket No. CP63–204, *et al.*

(6) The acquisition of reserves and the construction and operation of facilities as proposed by El Paso herein are consistent with the public convenience and necessity independent of El Paso's applications in Docket No. CP64–76.

(7) The construction and operation of the facilities proposed by El Paso herein is feasible from the engineering standpoint.

(8) The construction and operation of the facilities proposed herein by El Paso is economically feasible.

(9) The facilities described in El Paso's application in Docket No. CP64–211 and in the evidence herein, and designated as "auxiliary facilities," do not require a certificate of public convenience and necessity, by reason of the provisions of the Commission's General Policy and Interpretations, § 2.55(a).

(10) Each applicant herein is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(11) The gas of which Socony Mobil Oil Company, Inc. is seller, involved in these proceedings, meets the quality standards prescribed by the Commission in Opinion Nos. 468 and 468–A.

(12) The sale of natural gas as proposed herein by each producer applicant herein together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

The Commission orders:

(A) A certificate of public convenience and necessity be and is hereby issued to El Paso Natural Gas Company to construct and operate the facilities described in its applications in Docket Nos. CP62–176 and CP64–211, and in the evidence herein. El Paso shall comply with the provisions applicable to it of paragraph (I) hereof.

(B) Certificates of public convenience and necessity are issued, upon the terms and conditions of this order, authorizing the sales, by the producer applicants herein, of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective applications, amendments, supplements and exhibits in this proceeding.

(C) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as the applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against the respective applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved shall not imply approval of all the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(E) The notice provisions of Section 154.94(b) and the detailed submittal subprovisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to any reductions in rates hereby ordered.

(F) The certificate granted to Socony Mobil Oil Company, Inc. in Docket No. CI62–825, *et al.*, is conditioned upon a total initial price, including tax reimbursement, of 14.5 cents per Mcf at 14.65 psia, and within 30 days of the effective date of this order Socony Mobil Oil Company, Inc. shall file a supplement to its presently filed rate schedule reflecting the conditioned price as the initial price in lieu of the initial price provided in the present rate schedule.

(G) The certificate granted to Socony Mobil Oil Company, Inc. in Docket No. CI62–1355, *et al.*, is conditioned upon a total initial price, including tax reimbursement, of 16.5 cents per Mcf at 14.65 psia, and within 30 days of the effective date of this order Socony Mobil Oil Company, Inc. shall file a supplement to its presently filed rate schedule reflecting the conditioned price as the initial price in lieu of the initial price provided in the present rate schedule.

(H) The decision whether refunds should be ordered as a condition to the certificate granted to Socony Mobil Oil Company, Inc., in Docket No. CI62–825 is deferred for subsequent determination.

(I)(1) Ninety days after the issuance of this order, each producer-applicant (other than Socony Mobil Oil Company, Inc.) shall file with the Commission a Rate Schedule-Quality Statement in conformity with Appendix D to Opinion No. 468, as modified by Opinion No. 468–A, for each contract of such producer-applicant in this consolidated proceeding. Such statement shall set forth either that the gas accords with all pipeline quality standards established in Opinion No. 468, as modified by Opinion No. 468–A, or in which respects the gas deviates from the particular quality standards there established; the agreed cost to El Paso of processing the gas to bring it to the pipeline quality standards there established with respect to each quality deviation; any upward or downward Btu adjustment; and the resulting applicable area rate for the gas. Such statement shall be signed by both the seller and El Paso. If the seller and El Paso are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statement herein required within the prescribed time which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. El Paso may file a separate statement setting forth its views within the period herein provided.

(2) The statement filed hereunder which reflects full agreement between the seller and El Paso shall be deemed accepted by the Commission, unless the Commission, within 60 days after such filing, shall otherwise order. In the event of disagreement between the seller and El Paso or, where the Commission otherwise determines that the statement filed is inconsistent with the provisions of ordering paragraph (B) of Opinion No. 468, as modified by Opinion No. 468–A, the Commission will, after appropriate proceedings, prescribe the applicable area rate to be applied as of the date of first deliveries of gas by each producer-applicant to El Paso under the contracts here involved.

(J) Copies of all filings made pursuant to ordering paragraphs (H) and (I) hereof shall be served at the time of filing upon all intervenors herein other than Gulf Pacific and upon all other participants who within 45 days of the issuance of this order shall so request in writing.

(K) Any participant shall have 20 days to respond to any statement, brief or memorandum filed pursuant to ordering paragraphs (H) or (I) hereof.

(L) The certificates granted to the producer applicants, other than Socony Mobil Oil Company, Inc. are hereby conditioned to a total initial price, including tax reimbursement, no greater than the applicable base area rate of 16.5 cents per Mcf at 14.65 psia subject to further reductions, effective as of the effective date of this order, for any quality deviations as determined pursuant to ordering paragraph (I) hereof, and further conditioned upon the filing by the respective applicants within 30 days of the determination of such rate of a supplement to its filed rate schedule reflecting the applicable area rate in lieu of any rate provided in the rate schedule then on file, and further conditioned upon refunds being made with interest by each applicant of the difference between the applicable area rate and any rate in excess thereof collected subsequent to the effective date of this order. The manner and time of such refunds shall be determined by the Commission in a later order.

(M) Should the quality of the gas delivered at any time deviate from the quality standards set forth in ordering paragraph (B) of Opinion No. 468-A so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act; *provided, however*, that adjustments reflecting changes in Btu content shall be computed by the applicable formula set forth in Opinion No. 468, as modified by Opinion No. 468-A, and charged without the filing of a notice of a change in rate.

(N) Each certificate granted to a producer-applicant herein is issued upon the condition that the applicant shall not file any change in rate providing for a price in excess of the applicable area rate prior to (1) subsequent order of the Commission in this proceeding permitting such filing or (2) January 1, 1968, whichever is earlier.

(O) Each certificate granted to a producer-applicant herein is issued upon the condition that the proposed rate schedule of the applicant shall be amended by the inclusion of the following language:

> From the effective date of the order of the Federal Power Commission in the Permian Basin Area Rate Proceeding AR61-1, until January 1, 1968, no increase in rates may be filed, except in compliance with a specific order of the Commission, at a rate in excess of the applicable area rate as determined pursuant to said proceeding or pursuant to later order of the Commission. Applicable area rate, as that term is used herein, shall mean the rate to be determined after all adjustments from the ceiling price because of deviations from the pipeline quality standards established in the aforesaid order of the Commission.

(P) The issuance of certificates in this proceeding shall not prejudice the determination in *Transwestern Pipeline Company, et al.*, Docket Nos. CP63-204 and CP64-91, *Gulf Pacific Pipeline Company*, Docket No. CP63-223 and *El Paso Natural Gas Company*, Docket No. CP64-76.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GULF STATES UTILITIES COMPANY, DOCKET NO. E-7259

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued January 6, 1966)

Gulf States Utilities Company (Applicant), incorporated under the laws of the State of Texas and doing business in that State and the State of Louisiana, with its principal business office at Beaumont, Texas, filed an application with the Federal Power Commission on November 26, 1965, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $20,000,000, principal amount of First Mortgage Bonds, due 1966.

Applicant proposes to issue the Bonds under its Indenture of Mortgage, dated September 1, 1926, as supplemented and modified by 21 supplemental indentures and as to be further supplemented and modified by the Twenty-second Supplemental Indenture under which the Manufacturers Hanover Trust Company of New York is Trustee.

On or about January 6, 1966, Applicant proposes to invite sealed written bids for the purchase of the Bonds by newspaper publication and by distribution of a "Public Invitation for Bids for the Purchase of the Bonds", setting forth terms and conditions relating thereto. All bids, whether from a single bidder or group of bidders, must be in writing on the Form of Bid furnished by Applicant and must be for the purchase of the entire amount of the Bonds. Each bid must specify, among other things: (1) the coupon rate which shall be a multiple of ⅛ of 1%; (2) the price to be paid to the Applicant, which price shall not be less than 100% nor more than 102½% of principal amount thereof, and shall provide that accrued interest on the Bonds will be paid to the Applicant by the Purchasers; and (3) either (a) the initial public offering price at which the Bonds will be offered by the Purchasers for resale shall not exceed the amount of the bid plus 1½% of the principal amount of the Bonds, or (b) no public offering of the Bonds for resale is intended.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds must be delivered to the Applicant's representative at the Manufacturers Hanover Trust Company, Room A, Fourth Floor, 40 Wall Street, New York, New York, before 11 a.m. New York time on January 18, 1966, and be accompanied by the deposit of $600,000. Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the invitation, it will accept the bid which provides for the lowest cost of money.

Applicant states that the proceeds obtained from the proposed issuance of Bonds will be utilized to pay off Applicant's outstanding short-term notes, estimated to be in the amount of $17,000,000, at the time of a sale of the new Bonds, and to furnish a portion of the funds for Applicant's construction program. Applicant anticipates that the cost of its 1965 and 1966 construction program will total about $49,500,000, and $50,000,000 respectively. Principal items in this program include the completion of 440,000 kw generating unit at the Sabine generating plant, the commencement of construction of a 580,000 kw generating unit at the Willow Glen generating plant which is scheduled for completion in 1968, construction of and additions to substations and the construction of 147 miles of 500 kv transmission line.

Written notice of the application has been given to the Texas Railroad Commission and the Louisiana Public Service Commission and to the Governor of each of those states. Notice has also been given by publication in the Federal

Register on December 9, 1965 (30 F.R. 15241) stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before December 21, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 27, 1957, *Gulf States Utilities Company*, Docket No. E-6785 (18 FPC 701).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given on this application is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CALIFORNIA-PACIFIC UTILITIES COMPANY, PROJECT NO. 1987

ORDER AMENDING LICENSE (MAJOR)

(Issued January 7, 1966)

Application was filed on November 9, 1960, and amended on May 4, 1964, by California-Pacific Utilities Company, licensee for Project No. 1987, located on Lake, Upper Lake, North Fork of Desolation, Lost and North Fork of Congo Creeks, in Baker and Grant Counties, Oregon, and affecting lands of the United States within the Umatilla and Whitman National Forests.

The aforementioned filings request Commission approval: (1) of two revised exhibits showing the actual location of the transmission line extending between the Towns of Fremont and Bourne; (2) to exclude the Upper Lake Reservoir from the license, which the licensee plans to abandon as being uneconomic to maintain; and (3) two exhibits on file with the Commission which show the Upper Lake reservoir to be eliminated from the license (10 FPC 1141).

By letter dated July 20, 1965, the Chief, Forest Service, reported that the National Forest lands formerly occupied by the Upper Lake reservoir have been restored to a condition satisfactory to the Service, and requested that the Commission approve the exclusion of the reservoir as a part of the project effective as of December 31, 1964. Exclusion from the license of the Upper Lake reservoir would reduce the area of lands of the United States occupied by the project by 84.54 acres, exclusive of those lands occupied by transmission line right-of-way, with a resultant reduction in the amount of annual charges for such occupancy.

By letter dated October 11, 1962, the Chief, Forest Service, offered no objection to Commission approval of the revised exhibits filed as part of the application for amendment, which show the correct location of the transmission line between Fremont and Bourne.

The Commission finds:

(1) Public notice of the application, as amended, has been given. No protests or petitions to intervene have been received.

(2) The license for Project No. 1987 amended as hereinafter provided is in the public interest.

(3) The reduced amount of annual charges for recompensing the United States for the use, occupancy and enjoyment of its lands by the project, exclusive of those used for transmission line right-of-way, is reasonable as hereinafter fixed and specified.

(4) The following described exhibits, on file with the Commission and revised by Commission staff on July 20, 1965 to show the exclusion therefrom of the Upper Lake reservoir, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit K-1 (FPC No. 1987-2) entitled "Fremont Project," signed California-Pacific Utilities Company by E. K. Albert, Vice President and Chief Engineer, on January 9, 1948 (revised as of February 21, 1950), including Field Notes of Survey of Ditch and Creek Channel to Convey the Waters of the North Fork of Desolation Creek to the Olive Lake Reservoir of the Fremont Power Company, Baker City, Oregon, signed L. C. Stevenson, Surveyor, March 6, 1909; and

Exhibit K–2 (FPC No. 1987–3) entitled "Fremont Project," signed California-Pacific Utilities Company by E. K. Albert, Vice President and Chief Engineer, on January 9, 1948 (revised as of February 21, 1950)

Exhibit K–3 (FPC No. 1987–4) entitled "Fremont Project," signed California-Pacific Utilities Company by E. K. Albert, Vice President and Chief Engineer, on January 9, 1948 (revised February 21, 1950);

Exhibit K–5 (FPC No. 1987–7) entitled "Fremont Project," signed California-Pacific Utilities Company by E. K. Albert, Vice President and Chief Engineer, on January 9, 1948 (revised as of February 21, 1950).

(5) *Exhibit K–4* (FPC No. 1987–13 and –14) filed as part of the application and showing the corrected location of the transmission line between Fremont and Bourne, conforms to the Commission's Rules and Regulations and should be approved as part of the license for the project.

(6) The following described exhibit on file with the Commission as a part of the license for the project and showing the structures of the dam and spillway of the Upper Lake reservoir, should be eliminated from the license for the project:

Exhibit L—Sheet 3 (FPC No. 1987–12) entitled "Fremont Project," signed California-Pacific Utilities Company by E. K. Albert, Vice President and Chief Engineer, on January 9, 1948 (revised as of February 21, 1950).

The Commission orders:

(A) The revised exhibits described in findings (4) and (5) above are hereby approved as part of the license for Project No. 1987, and the exhibit described in finding (6) above is hereby eliminated from the license for the project.

(B) The license for Project No. 1987 is hereby amended, effective as of January 1, 1965, as follows:

PARAGRAPH I. Subparagraph (b) on page 1141 of the license is eliminated therefrom.

PARAGRAPH II. A new subparagraph (b) on page 1141 of the license, to read as follows, is hereby included in the license: (b) The principal project works comprising Project No. 1987 consist of: one partly artificial reservoir, known as Olive Lake, formed in part by a dam on Lake Creek, and having an area of about 172 acres and storage capacity of about 5,591 acre-feet; a low dam on North Fork of Desolation Creek diverting water through a ditch about 7,060 feet long to Olive Lake; a pipe line from Olive Lake to the powerhouse; a low dam on Lost Creek and a conduit about 1,690 feet long diverting additional water to the pipe line; a powerhouse on the North Fork of Congo Creek containing two 900-horsepower water wheels connected to two 550-kilowatt generators; a 22-kilovolt transmission line about 18.25 miles long from the power plant to Bourne; a 2,300-volt transmission line about 5.5 miles long from the power plant to Olive Lake and a telephone line on the same poles; and appurtenant facilities.

PARAGRAPH III. Subparagraph (ii) of Article 25 of the license is amended to read as follows, effective as of January 1, 1965:

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $331.42.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the

Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NOS. CP66–16 AND CP66–17

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ACCEPTING NOTICE OF CANCELLATION OF RATE SCHEDULE FOR FILING

(Issued January 10, 1966)

On July 16, 1965, Arkansas Louisiana Gas Company (Applicant) filed applications in Docket Nos. CP66–16 and CP66–17 pursuant to Section 7(b) of the Natural Gas Act requesting permission and approval to abandon approximately 44,530 feet of 14-inch gas pipeline and appurtenances and to abandon gas service to Oklahoma Natural Gas Company (ONG) at Enid, Oklahoma, as more fully set forth in the applications.

By its filing in Docket No. CP66–16, Applicant requests permission and approval to abandon, in the manner indicated below by segments, the 14-inch pipeline which Applicant and its predecessor, Consolidated Gas Utilities Corporation, have operated for many years in Enid and its environs:

(1) Abandon in place 1,650 feet,

(2) Abandon by sale to ONG 13,780 feet to be used by ONG for distribution, and

(3) Reclassify 29,100 feet as "Distribution Plant" instead of "Transmission Plant" as it is now classified on Applicant's books.

The 14-inch pipeline has not been used as a high pressure interstate transmission facility since changes were made in Applicant's Oklahoma system pursuant to certificate authorization issued by the Commission on December 2, 1963, in Docket No. CP63–352, 30 FPC 1385. Applicant states that the 14-inch pipeline is now used only to serve 58 rural retail customers.

By the order issued December 2, 1963, in Docket No. CP63–352, Applicant was authorized to construct and operate a 12-inch transmission pipeline to replace the 14-inch pipeline which is herein proposed to be abandoned and reclassified. The new 12-inch pipeline was constructed at a location north of the 14-inch pipeline in order to by-pass the built-up area of Enid. Due to the location of the new pipeline, it was not economical to switch the 58 rural retail customers to it.

By its filing in Docket No. CP66–17, Applicant also requests permission and approval to abandon natural gas service to ONG at Enid and to abandon the related regulating and metering facilities. The service has been rendered under Applicant's FPC Gas Rate Schedule G–4 (Original Sheet No. 6 of Applicant's FPC Gas Tariff, First Revised Volume No. 1) and under a service agreement dated September 15, 1939, which has been terminated by mutual agreement, as indicated by letter agreement dated May 4, 1965, effective May 31, 1965.

The contract between Applicant and ONG, which is incorporated in Applicant's FPC Gas Rate Schedule G–4, was terminated by mutual consent since ONG no longer desires to purchase gas from Applicant under such rate schedule. No deliveries from Applicant to ONG have been made since May 31, 1965.

ONG will continue service to the area from its own gas supply. The 13,780-foot segment of the 14-inch pipeline to be sold by Applicant to ONG will be used by the latter in its distribution operations since the City of Enid has now grown to encompass this line. ONG's Enid distribution system is now connected to its main system and is being supplied therefrom.

Eighteen of the 58 rural retail customers will be served by ONG from its supply through the 13,780-foot segment. The remaining 40 rural retail customers will continue to be served by Applicant through the 29,100-foot segment which is to be reclassified as "Distribution Plant".

Applicant has also given notice of cancellation of its FPC Gas Rate Schedule G–4 since ONG was the only customer purchasing gas under that rate schedule, which calls for delivery at Enid.

Notices of the filing of the applications in Docket Nos. CP66–16 and CP66–17 were published in the Federal Register on July 28, 1965 (30 F.R. 9415) and July 29, 1965 (30 F.R. 9500), respectively. No petition to intervene, notice of intervention or protest to the granting of either application has been filed.

At a hearing held on January 6, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits submitted in support of the authorizations sought therein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities and service to be abandoned, as hereinbefore described and as more fully described in the applications in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities and service by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described and as more fully described in the applications in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Applicant's notice of cancellation of its Rate Schedule G–4 (Original Sheet No. 6 of Applicant's FPC Gas Tariff First Revised Volume No. 1) be accepted for filing effective as of the date of this order.

The Commission orders:

(A) Permission for and approval of the abandonment by Arkansas Louisiana Gas Company of the facilities and service hereinbefore, as more fully described in the respective applications, are granted.

(B) Applicant's notice of cancellation of its Rate Schedule G–4 (Original Sheet No. 6 of Applicant's FPC Gas Tariff First Revised Volume No. 1) is accepted for filing effective the date of this order.

(C) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-166

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1966)

On November 29, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-166 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reinstallation and operation of an existing meter station which was previously used for a direct sale so that, upon completion of the reinstallation, the meter may be utilized for the purchase of residue gas from Sinclair Oil & Gas Company (Sinclair) in Midland County, Texas, as more fully described in the application.

The 4½-inch orifice-type purchase meter station will be reversed to measure the estimated 5,000 Mcf per day of residue gas which will be sold by Sinclair to Applicant. The station was formerly utilized in making a direct sale of gas by Applicant to Sinclair at the same location for cycling operations. Applicant will remove and reinstall the station in order to accommodate the reverse flow of gas. The estimated cost of reinstalling the meter station is $300.

Sinclair has been making wellhead deliveries of gas to Applicant at various points in Midland County, Texas, pending arrangements for the processing of the gas. Sinclair now proposes to process the gas and deliver the resulting residue to Applicant pursuant to authority heretofore granted in Docket No. G-2893.

Due notice of the filing of the application was published in the Federal Register on December 14, 1965 (30 F.R. 15383). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 6, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to El Paso Natural Gas Company authorizing the reinstallation and operation of the facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, David S. Black and Carl E. Bagge.

ORDER ESTABLISHING NATIONAL POWER SURVEY REGIONAL ADVISORY COMMITTEES

(Issued January 10, 1966)*

The Federal Power Commission is directed by section 202(a) of the Federal Power Act (16 U.S.C. 792–825r) to promote and encourage voluntary interconnection and coordination of the nation's electric power facilities in the interest of economy and conservation, and is authorized by section 311 of the Act to conduct broad investigations covering all aspects of the entire power industry. In order to accomplish more effectively the objectives of the National Power Survey, a report issued by the Commission in December 1964, and in accordance with the Executive Order 11007 of February 26, 1962 (27 F.R. 1875) relating to the Formation and Use of Advisory Committees, we have concluded that it is in the public interest that the following six National Power Survey Regional Advisory Committees be, and accordingly, are established as of the date of issuance of this order: Northeast, Southeast, East Central, South Central, West Central, and West. The order issued July 7, 1965, here revised, is rescinded, 34 FPC 14.

1. *Purpose.* The Regional Advisory Committees will assist the Commission and the Executive Advisory Committee in its work with and for the Commission and specifically in encouraging the utility systems in each Region to pursue courses of action consistent with the broad goals of the National Power Survey, in reporting the progress being made in attaining those goals, and in updating the guidelines of the Survey. The Committees will facilitate the exploration of all practicable opportunities for more efficient and reliable development and

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* This order was adopted December 22, 1965, before Chairman Swidler left the Commission. Published in the Federal Register on January 18, 1966 (31 F.R. 586).

operation of power systems in each region. Meetings of the Committees will constitute forums for the exchange of ideas and for fostering better communication and understanding among all segments of the utility industry in the region. All systems of every segment of the industry would be encouraged to support the analyses through expressions of their needs and desires. The Committees will be consultative only, and they will operate within the limits established by the Commission, recognizing the appropriate corporate and public responsibilities of utility systems, and will function in keeping with the position of the Commission enunciated on many occasions that the National Power Survey is not intended as a blueprint or as a means of compelling the construction of particular facilities.

2. *Selection of Committee Members.* All Committee members and alternates shall be selected by the Chairman of the Commission with the approval of the Commission and shall to the extent practicable, include representation from all segments of the industry engaged in the generation, transmission and distribution of electricity in each region.

3. *Conduct of Meetings.* The Chairman of the Commission, or in his absence, the Acting Chairman, or any full-time employee of the Commission designated by the Chairman or Acting Chairman of the Commission shall be present at all Committee meetings and shall be responsible for opening and for assisting in the conduct of the meetings and for adjourning meetings when, in his judgment, adjournment is in the public interest. The meetings will be conducted under the direction of the Chairman of the Regional Advisory Committee following an agenda approved in advance by the Chairman of the Commission or his designated representative.

4. *Minutes.* The Chairman of the Commission having made a finding that maintenance of a verbatim transcript would be impracticable and not in the public interest, there shall be kept by the Secretary of each Committee, in lieu thereof, a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by each Committee.

5. *Secretary of the Committee.* The Chairman of the Commission shall appoint a Secretary of each Committee from the Commission staff who shall be responsible for preparing summary minutes of all Committee meetings, notifying members of the meetings, circulating copies of an approved agenda, and maintaining all records related to organization, membership and operations of each Committee. The Secretary or his alternate shall be present during all meetings and shall certify the accuracy of all minutes.

6. *Location and Time of Meetings.* The initial meeting of each Committee will convene at the call of the Chairman or Acting Chairman of the Commission at the Office of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20426. Subsequent meetings normally will be convened at the call of the appropriate Regional Engineer after consultation with the Chairman of the appropriate Regional Advisory Committee. Meetings shall be held in the Commission's regional offices. Ordinarily, meetings will be held during the regular working hours of the Federal Power Commission.

7. *Report to the Committee.* The reports of the Committee will be presented to the Commission and the Executive Advisory Committee in written form. These reports will be directed toward the objectives set forth under "*Purpose.*"

8. *Duration of the Committee.* Each Committee shall terminate not later than two years subsequent to its date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such two-year period, that continued existence of the Committee is in the public interest. A like determination by the Commission shall be required not more

than 60 days prior to the end of each subsequent two-year period to continue the existence of each Committee thereafter.

9. The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register in accordance with the provisions of the Bureau of the Budget Circular No. A-63.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY AND SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-132

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1966)

On October 27, 1965, United Gas Pipe Line Company (United) and Southern Natural Gas Company (Southern), hereinafter referred to jointly as Applicants, filed in Docket No. CP66-132 an application, as supplemented on December 2, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain interconnecting facilities between United's and Southern's existing pipelines in Tangipahoa Parish, near Independence, Louisiana, the use of an existing point of interconnection near Kosciusko, Attala County, Mississippi, and the exchange of natural gas between the parties, as more fully described in the application.

Specifically, the proposal involves the installation and operation of an orifice meter, 0.6 miles of 4-inch pipeline, and related facilities in Tangipahoa Parish for the delivery of gas by Southern to United. Equivalent volumes will be redelivered by United to Southern through the existing interconnecting facilities near Kosciusko.

Southern has agreed to deliver such daily volumes as United may require from time to time, with simultaneous redeliveries being made by United. The parties have entered into a precedent agreement dated August 25, 1965.

The purpose of the proposal is to alleviate low pressure experienced by United south of Independence, Louisiana.

The estimated cost of construction of the proposed interconnection is $30,631, of which $400 is to be reimbursed by United to Southern for the tap on Southern's pipeline. United will bear the entire cost, which will be financed out of funds on hand. The project is economically feasible.

Due notice of the filing of the application was published in the Federal Register on November 17, 1965 (30 F.R. 14393). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 6, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the

Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(3) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the exchange of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the exchange of natural gas by Applicants are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United Gas Pipe Line Company and Southern Natural Gas Company authorizing the construction and operation of the facilities and the exchange of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the exchange of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITY OF DIXON, MISSOURI AND OKLAHOMA ILLINOIS GAS PIPELINE COMPANY, DOCKET NO. CP65–175

ORDER DISMISSING APPLICATION

(Issued January 14, 1966)

On December 14, 1964, the City of Dixon, Missouri (Applicant), filed in Docket No. CP65–175 an application, as supplemented on March 15, 1965, pursuant to

Section 7(a) of the Natural Gas Act for an order directing Oklahoma Illinois Gas Pipeline Company (Respondent) to establish physical connection of its proposed facilities with those which Applicant proposed to construct and to sell and deliver natural gas to Applicant for resale and distribution in the City of Dixon and environs. On September 9, 1965, in Opinion No. 474 (34 FPC 771), *Natural Gas Pipeline Company of America, et al.*, Docket No. CP62–243, *et al.*, the Commission denied Respondent's application in Docket No. CP62–260 for a certificate of public convenience and necessity authorizing the construction and operation of facilities which would be used, *inter alia*, to serve Applicant.

The Commission finds:

The application filed by the City of Dixon, Missouri, in Docket No. CP65–175 is moot.

The Commission orders:

The application filed by the City of Dixon, Missouri, in Docket No. CP65–175 is dismissed.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–184

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1966)

On November 29, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP64–184 an application to amend the order issued in said docket on April 20, 1964, 31 FPC 959, as amended by orders issued March 29, 1965, 33 FPC 644, and September 3, 1965, 34 FPC 735, all as more fully set forth in the application to amend.

By the aforementioned orders, Applicant was authorized to construct and operate certain facilities and to sell and deliver natural gas for resale by use of such facilities. Among the authorized facilities was the Deming Ranchettes tap which was proposed to be installed and utilized for the sale and delivery of natural gas to Western Gas Service Company (Western) for resale to domestic consumers situated in the Deming Ranchettes subdivision located in the vicinity of Deming, New Mexico.

Applicant now states that these facilities have not been constructed and are not now proposed to be constructed since Western does not now propose to initiate natural gas service to the Deming Ranchettes subdivision and requests that the order issued in Docket No. CP64–184, as amended, be further amended by deleting the authorization to construct and operate the Deming Ranchettes tap and to sell and deliver natural gas to Western for resale in the said Deming Ranchettes subdivision.

Due notice of the filing of the application to amend and opportunity for hearing has been given by publication in the Federal Register on December 11, 1965 (30 F.R. 15334). No protest, notice of intervention, petition to intervene or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued April 20, 1964, in Docket No. CP64–184 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 20, 1964, in Docket No. CP64–184 is amended so as to delete therefrom the authorization to construct and operate the Deming Ranchettes tap and to sell and deliver natural gas to Western Gas Service Company for resale in the said Deming Ranchettes subdivision.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66–153

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1966)

On November 15, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP66–153 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of natural gas to California-Pacific Utilities Company (Cal-Pac) for transportation to and resale and general distribution in the community of North Powder, Oregon, and environs, as more fully set forth in the application.

Applicant proposes to construct and operate a positive type measuring and regulating station, and necessary appurtenances, to be located adjacent to its 22-inch O.D. Northwest Division mainline in Union County, Oregon. The proposed deliveries of natural gas to Cal-Pac will be made at the outlet of such facility and Cal-Pac will then transport the gas so delivered through facilities proposed to be constructed by it to points of resale and distribution in the community of North Powder, Oregon, and environs.

Cal-Pac proposes to construct and operate approximately 3.1 miles of 4-inch and 2-inch transmission and distribution pipeline extending from Applicant's proposed measuring and regulating station to a point of termination in the immediate vicinity of North Powder, Oregon, at an estimated cost of $55,945.

The estimated maximum daily and annual natural gas requirements of Cal-Pac during the third full year of proposed natural gas service will be 119 Mcf and 12,376 Mcf, respectively. The sales and deliveries which are the subject of the instant application are proposed to be made in accordance with and at rates contained in Applicant's Rate Schedule DS–1, FPC Gas Tariff, Original Volume No. 3.

Applicant states that if the facilities and service embraced by the instant application are approved, they will be divested by Applicant to Northwest Pipeline Corporation under the authorizations sought by Applicant in Docket No. CP66–27, if such authorizations issue subsequent to the grant of the instant application. Otherwise, Northwest Pipeline Corporation will be substituted for Applicant under the instant application.

The estimated cost of Applicant's proposed modification is $6,800, which will be financed from currently available working funds.

After due notice the Public Utility Commissioner of Oregon filed a notice of intervention in the proceeding on December 6, 1965, in support of the application and waiving formal hearing. No other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 13, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

(D) Cal-Pac shall be prepared to receive natural gas from Applicant within 6 months from the date of this order.

(E) Applicant shall file pursuant to Part 154 of the Commission's Regulations an acceptable service agreement reflecting the terms and conditions of the sale and the delivery of natural gas to Cal-Pac.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP66–118

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1966)

On October 21, 1965, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP66–118 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 3.4 miles of 24-inch O.D. pipeline and appurtenances, as more fully described in the application.

The proposed pipeline will extend Applicant's Line L–3100 to complete the loop of its Line L–2450 between its Treat Station and Weaver Station in Knox and Richland Counties, Ohio.

The proposed pipeline will enable Applicant to increase the volume of natural gas to be transported north to storage areas during summer injection periods in order to meet required storage inventories beginning with the 1966-67 winter heating season. The 3.4 miles of 24-inch pipeline loop will provide an additional 28,000 Mcf per day of required transmission capability to the storage area when Applicant's Crawford Station is operating at its calculated 1966 design day discharge pressure of 782 psig. Operation of Crawford Station at its maximum allowable of 800 psig would result in additional capacity of 15,000 Mcf per day in excess of the 28,000 Mcf per day, after the proposed loop line is installed.

The estimated cost of construction of the proposed pipeline and appurtenances is $333,000, which will be financed through promissory notes or common stock to be issued to Applicant's parent company, The Columbia Gas System, Inc. The proposal is economically feasible.

Due notice of the filing of the application was published in the Federal Register on November 3, 1965 (30 F.R. 13914). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 13, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience

and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to The Ohio Fuel Gas Company authorizing the construction and operation of the facilities and the transportation of natural gas in interstate commerce as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SINCLAIR OIL & GAS COMPANY, DOCKET NO. RI66-246

ORDER ACCEPTING CONTRACT AMENDMENT, CONDITIONALLY ACCEPTING RATE FILING AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued January 14, 1966)

On December 15, 1965, Sinclair Oil & Gas Company (Sinclair)[1] tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated December 10, 1965.

Purchaser and Producing Area: El Paso Natural Gas Company (June Saunders Lease, Sweetie Peck Field, Midland County, Texas), (R.R. District No. 8), (Permian Basin Area).

Rate Schedule Designation: Supplement No. 6 to Sinclair's FPC Gas Rate Schedule No. 174.

Effective Date: January 15, 1966.[2]

Amount of Annual Increase: $298.

Effective Rate: 18.1978¢ per Mcf.[3] [4]

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[1] Address is: P. O. Box 521, Tulsa, Oklahoma 74102. Attn: Mr. P. T. Davis.

[2] The stated effective date is the first day after expiration of the required statutory notice.

[3] Present rate is in effect subject to refund in Docket No. RI65-38.

[4] Subject to 3.3499¢ per Mcf reduction for gathering, treating and compressing (rate for gas gathered, treated, compressed and processed by buyer).

Proposed Rate: **18.2430¢ per Mcf.**[5] [6]
Pressure Base: **14.65 psia.**

On August 4, 1965, Sinclair tendered for filing a Letter Agreement dated June 28, 1965, which provides for seller to gather, treat, compress and process the gas in its Midland Gas Products Plant and deliver the residue gas derived therefrom into buyer's pipeline at the tailgate of the plant. We believe that it would be in the public interest to accept for filing Sinclair's aforementioned Letter Agreement to become effective as of September 4, 1965, the date of expiration of the statutory notice, but not the proposed rate contained therein which will be suspended as indicated below.

Sinclair, a producer-respondent in the Permian Basin Opinion No. 468, proposes a tax increase from 18.1978¢ to 18.2430¢ per Mcf as permitted under the above letter agreement for a sale of gas to El Paso Natural Gas Company (El Paso) in the Permian Basin Area of Texas. The proposed rate exceeds the applicable area ceiling base rate of 14.5¢ per Mcf prescribed by Opinion No. 468, 34 FPC 159.

The proposed increase involves a sale of residue gas derived from casinghead gas. The gas currently being gathered, treated, compressed and processed by El Paso under an interim sales arrangement, until such time as Sinclair can process (or have processed) such gas and deliver the residue gas derived therefrom direct to El Paso. For this service, El Paso is currently charging Sinclair 3.3499¢ per Mcf. Sinclair's current tax reimbursement (0.1978¢) is based on a taxable rate of 14.6501¢ per Mcf (18.0¢ base rate less 3.3499¢ service charge). Sinclair recently constructed a processing plant in the vicinity of the subject sale and now proposes to gather the casinghead gas into its Midland Gas Products Plant, process same and deliver the residue remaining therefrom into El Paso's pipeline at the tailgate of the plant. The arrangement is set forth in the above letter agreement which provides the basis for the proposed increased rate. The proposed tax increase of 0.0452¢ reflects this change in delivery conditions which requires the tax to be based on a taxable rate of 18.0¢ per Mcf, the base rate under the contract. While the proposed increase is ostensibly a tax increase, the increase rate sought here by Sinclair also reflects a substantial change in the net rate Sinclair will collect when the proposed rate becomes effective because that rate will not be subject to the service charge now provided for under the currently effective rate.

The just and reasonable rate prescribed by the Permian Basin Opinion No. 468 and the moratorium applicable to all sales covered by Opinion No. 468 covers the subject sale. The proposed rate is thus subject to rejection. In accordance with the decision of the Tenth Circuit on October 20, 1965, in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) Sinclair has obtained a stay through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468–A, 34 FPC 1068. Accordingly, instead of rejecting Sinclair's filing at this time, we shall conditionally accept it for filing, and simultaneously suspend the rate increase for a period of five months from January 15, 1966, the date of expiration of the statutory notice. Our acceptance of the instant rate increase is expressly conditioned to provide that the rate increase will be rejected, *ab initio,* in the event the court stay referred to above is dissolved or Opinion Nos. 468 and 468–A are upheld upon judicial review insofar as ordering paragraph (H) is concerned.

Sinclair requests waiver of the statutory notice to permit an effective date of August 15, 1965, for its contract amendment, and an effective date of December 15, 1965, for its proposed rate increase. Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit earlier effective dates for Sinclair's rate filings and such request is denied.

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[5] Tax reimbursement increase.

[6] Rate for gas gathered, treated, compressed and processed by seller.

The proposed changed rates and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause has been shown for accepting for filing Sinclair's proposed contract amendment dated June 28, 1965, designated as Supplement No. 5 to Sinclair's FPC Gas Rate Schedule No. 174, and for permitting such supplement to become effective as of September 4, 1965, the date of expiration of the statutory notice.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and the Supplement No. 6 to Sinclair's FPC Gas Rate Schedule No. 174 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Sinclair's contract amendment dated June 28, 1965, designated as Supplement No. 5 to Sinclair's FPC Gas Rate Schedule No. 174, is accepted for filing and permitted to become effective as of September 4, 1965.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 5 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 6 to Sinclair's FPC Gas Rate Schedule No. 174.

(C) Pending such hearing and decision thereon, Supplement No. 6 to Sinclair's FPC Gas Rate Schedule No. 174 is conditionally accepted for filing, as noted above, and is hereby suspended and the use thereof deferred until June 15, 1966, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.37(f)) on or before March 2, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SKELLY OIL COMPANY, ET AL., DOCKET NO. G-18638, ET AL.; SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. G-18907

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 14, 1966)

South Texas Natural Gas Gathering Company (South Texas), on December 17, 1965, filed an application for rehearing of an order issued in these proceedings on November 19, 1965.[1] In its order of November 19, 1965, the Commission rejected Supplement No. 56 to South Texas' FPC Gas Rate Schedule No. 2, rescinded a letter of the Secretary dated July 15, 1964, accepting the said supplement, and directed South Texas to file a rate schedule and make refunds in compliance with ordering paragraph (D) of Opinion No. 362, issued August 30, 1962 (28 FPC 401).

In Opinion No. 362, South Texas was authorized to gather, transport and resell gas to Transcontinental Gas Pipe Line Corporation (Transco), under a single contract which included a dedication to this sale of all of the several small packages of gas sold to South Texas by various producers whose initial rates were at issue in the certificate proceeding in Skelly Oil Company, *et al.*, Docket No. G–18368, *et al.* The Commission conditioned the certificates for sales to South Texas by all producers proposing a price in excess of 15¢ per Mcf upon rate reduction reflecting a maximum initial price level of 15¢ per Mcf. Paragraph (D) of the Commission's order directed South Texas, as of the date of the order, and as a condition of the certificate issued to it, "to charge * * * a rate for the sale of gas to Transco that shall represent its present initial charge of 20¢ per Mcf * * * less the reduction in its average cost of purchased gas effected by this order."

On June 16, 1964, South Texas filed a refund report and Supplement No. 56 to its Rate Schedule No. 2 in purported compliance with the rate condition in Opinion No. 362. The rate reflected in Supplement No. 56 and the refund report was computed by deducting from 20 cents per Mcf only the reduction in South Texas *overall system-wide* cost of gas which resulted from the producer rate reductions effected by Opinion No. 362. By letter dated July 15, 1964, the Secretary of the Commission informed South Texas that its refund report and Supplement No. 56 complied with paragraph (D) of Opinion No. 362, and that Supplement No. 56 was accepted for filing.

A motion for an order rejecting Supplement No. 56, rescinding the Secretary's letter of July 15, 1964, and directing proper compliance with paragraph (D) of Opinion No. 362 was filed by Consolidated Edison Company of New York, Incorporated, Long Island Lighting Company, and The Brooklyn Union Gas Company (New York Companies) on December 9, 1964. The basis for this motion was the contention that compliance with paragraph (D) would require computing the South Texas-Transco rate by deducting from 20 cents per Mcf the reduction in South Texas' cost for the *gas dedicated to Transco*, not all gas purchased, which resulted from the producer rate reductions effected by Opinion No. 362. The substance of this motion was embodied in the order issued November 19, 1965.

In its application for rehearing, South Texas asserts: (1) that its Supplement No. 56, as filed on June 16, 1964, is consistent with the conditions imposed by paragraph (D) of Opinion No. 362; (2) that the rate contained in Supplement No. 56 became effective either by the action of the Secretary or upon thirty days' notice, and cannot now be modified in the manner prescribed by the Commission's order of November 19, 1965; and (3) that the motion filed by the New York Companies on December 9, 1964, was untimely and had already been denied by operation of law prior to the Commission's order of November 19, 1965.

In the challenged order of November 19, 1965, against which South Texas seeks rehearing, the Commission interpreted paragraph (D) of Opinion No. 362

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[1] Order Directing Compliance With Paragraph (D) of Opinion No. 362 Rejecting Supplement No. 56 to South Texas Natural Gas Gathering Company FPC Gas Rate Schedule No. 2 And Rescinding A Letter of the Secretary Dated July 15, 1964, 34 FPC 1348.

to require South Texas to compute the rate reduction to Transco on the basis of the cost of gas dedicated to Transco rather than on the basis of the system-wide cost of gas. South Texas contends that the Commission's reference in paragraph (D) to its "* * * *average* cost of purchased gas effected by this order" necessarily implies the use of the *system-wide* average gas cost. However, the Commission's language must certainly be construed in the context of its normal practice of prescribing rate reductions and refunds on an incremental basis in certificate proceedings.[2] Viewed in this light, our failure to specify the use of system-wide average cost demonstrates that we did not intend to make any departure from our normal practice of requiring refunds and rate reductions calculated on an incremental basis. For the same reason, South Texas clearly errs in asserting that we were required to recite expressly that average cost should be calculated on the basis of gas dedicated to Transco in order to insure the applicability of our conventional standards.

Nor do we perceive any merit in South Texas' further contention that its filing of Supplement No. 56 constituted a rate filing, within the purview of Section 4(d) of the Natural Gas Act, which upon acceptance for filing after 30 days notice became the lawful filed rate for the sale by South Texas to Transco, and could thereafter be changed only in accordance with the procedures prescribed in Sections 4 and 5 of the Act. For, South Texas ignores the vital distinction between changes in a rate schedule made by a company pursuant to the filing and notice procedures prescribed in Section 4 of the Natural Gas Act and compliance rate filings submitted pursuant to an express condition imposed by a certificate of public convenience and necessity issued under Section 7 of that Act. In the former case, the proposed change in rates becomes effective automatically at the expiration of the 30 days notice period unless sooner suspended or found unlawful, while in the latter case the changes become effective when and if they comply with such conditions and such compliance is evidenced by an order of approval issued by the Commission or its duly authorized agent. Thus, paragraph (E) of Opinion No. 362 expressly imposed the additional condition that South Texas within 60 days of the issuance of that order file, in lieu of a pipeline form of tariff, "* * * special rate schedules for its sales to its customers in accordance with this opinion and order and Section 154.52 of our Regulations, *subject specifically to the acceptance by the Commission of the revised initial rate for the sale to Transco.*" These considerations make it plain that South Texas' Supplement No. 56 does not, unlike a Section 4(d) rate change initiated by the company, become effective upon its mere acceptance for filing. In any event, Sections 154.23 and 154.101 of the Commission's Regulations make it manifest that the "acceptance for filing of any tariff contract or part thereof is not to be considered as approval by the Commission" nor deemed "to serve in lieu of any requirements under Section 7 of the Natural Gas Act".

South Texas' Supplement No. 56 did not comply with and is inconsistent with ordering paragraph (D), so that the rate change sought to be accomplished by such filing has never become legally effective.

South Texas further argues that the missing element of Commission approval and of the necessary administrative finding that Supplement No. 56 complies with the applicable legal requirements of Opinion No. 362 is to be found in the Secretary's letter of July 15, 1964. At that time, Secretary Gutride purportedly exercised his delegated authority under Section 3.5(19) of the Commission's Rules of Practice and Procedure by accepting this rate supplement for filing and finding that it constituted "satisfactory compliance with paragraph (D) of Commission's Opinion No. 362 issued August 30, 1962." South Texas argues that the Secretary's action became final and is binding upon the Commission because it is the lawful act of its duly authorized agent. The flaw in this reasoning is that Section 3.5(19) clearly delegates to the Secretary only ministerial responsibility to accept for filing rate schedules and supplements thereto "*submitted in compliance* with conditions in certificates of public convenience and necessity * * * *when they meet the requirements prescribed* by such certificates * * *". Accordingly, a non-complying rate schedule can not be deemed to have been accepted for filing by the Secretary.

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[2] It is noteworthy that South Texas' supplemental "Third Year Cost of Service" filed on February 1, 1962, which was before the Commission when it acted on the New York Public Service Commission's request that producer rate reductions be reflected in South Texas' price to Transco (28 FPC 401, 415), shows purchased gas costs "allocated on the basis of the average costs of reserves *contractually dedicated to each sale*" (p. 6 of South Texas' February 1, 1962 filing). [Emphasis added]

Finally, South Texas maintains that the order of November 19, 1965 cannot be legally predicated upon the motion filed by the New York Companies on December 9, 1964, since that motion was filed too late and, in any event, was already denied by operation of law prior to the date of Commission action thereon. With respect to the first contention, we reiterate our prior finding in the order of November 19, 1965 that this motion was not untimely because South Texas made an *ex parte* compliance filing and the movants' acted promptly after they first learned of the problem. In its application for rehearing, South Texas alleges (p. 10) that there is no requirement in the Commission's rules or regulations that copies of rate supplements submitted in compliance with certificate conditions be served upon all parties to the certificate proceeding involved. However, Section 1.17(b) of the Rules of Practice and Procedure provides that all pleadings, notices and all other papers, except depositions, shall be served upon all participants to the proceeding. With respect to the matter of whether the Commission had pending before it a moving pleading requesting the relief provided in our order of November 19, 1965, South Texas errs in its tacit assumption that the Commission could not act on its own initiative to compel compliance with an outstanding and unsatisfied certificate condition. In any event, moreover, there is no merit to South Texas' contention that the motion of the New York Companies was automatically denied because not acted upon within 30 days after its date of filing. If viewed as an independent motion, the pleading submitted by the New York Companies is not subject to the 30 days provision of Section 1.12(e), which plainly applies only to motions filed during the pendency of hearings and is designed to expedite interlocutory rulings. On the other hand, the motion cannot properly be viewed as a petition for rehearing within the scope of Section 19(a) of the Natural Gas Act, so that it is not subject to the 30-day time limit imposed by that statutory provision. For, the unauthorized action of the Secretary cannot be validly considered an order of the Commission subject to a petition for rehearing.

For all of the foregoing reasons, we conclude that South Texas' application for rehearing is lacking in merit and that all of the relief requested should be denied.

The Commission orders:

The application for rehearing, filed by South Texas on December 17, 1965, is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-356; RED SNAPPER PIPE LINE COMPANY, DOCKET NO. CP66-168

ORDER GRANTING MOTION TO CONSOLIDATE, PERMITTING INTERVENTION, AND ADOPTING PROCEDURE ESTABLISHED BY PRESIDING EXAMINER

(Issued January 14, 1966)*

On December 13, 1965, Red Snapper Pipe Line Company (Red Snapper) filed a motion requesting that its application filed December 1, 1965, in Docket No. CP66-168 be consolidated for hearing with the application filed May 11, 1965, in Docket No. CP65-356 by Tennessee Gas Transmission Company (TGT). In support of its motion to consolidate Red Snapper states that it proposes to constuct a 30-inch marine pipeline, 128 miles in length, located in the Outer Continental Shelf area, and two 30-inch shore lines connecting its offshore line with terminals near Gibson, Terrebonne Parish, and Esther, Vermilion Parish, Louisiana. Upon completing construction of such facilities, Red Snapper proposes to engage in the transportation of natural gas in interstate commerce for the account of others, thereby serving as a "bridge" between newly-developed offshore reserves and onshore interstate pipeline companies.

Red Snapper was permitted to intervene in the proceeding regarding TGT's application filed in Docket No. CP65-356 wherein TGT proposes to construct offshore facilities to attach to its system its company-owned reserves located in five offshore fields. Red Snapper avers that its proposed 30-inch marine pipeline will come within close proximity to the reserves which TGT proposes to connect in Docket No. CP65-356 and that its proposal thus offers "* * * an alternative method of attaching Tennessee Gas' reserves." Red Snapper notes that the Presiding Examiner in the prehearing conferences held in the proceeding in Docket No. CP65-356 has already provided for the filing of testimony and exhibits by Red Snapper and that since Red Snapper will be proposing an alternative method for the connection of TGT's reserves in any event, it would be proper and expeditious for Red Snapper's application in Docket No. CP66-168 to be heard with TGT's application in Docket No. CP65-356 on a consolidated record.

Red Snapper contends that a consolidated record is particularly appropriate for these two applications because TGT and Red Snapper have not only presented two approaches for the development of vast offshore reserves, but have also raised complex engineering and technical concepts involving the operation of multiphase underwater pipeline systems whose anticipated performance can be determined only by analogy to existing smaller-scale facilities. Red Snapper believes that examination of these engineering concepts can best be made in a consolidated proceeding where TGT's and Red Snapper's respective engineering principles and designs can be compared and evaluated.

Red Snapper states that the consolidation it requests will not unduly delay the hearing on TGT's application and that TGT is not relying on the offshore reserves it proposes to attach in Docket No. CP65-356 to meet its market requirements for the 1966-67 heating season. Consequently, Red Snapper concludes that the requested consolidation is in the public interest because the public will suffer no detriment and there will be a saving in manpower and costs by the Commission, the applicants, and the interveners if the two applications are heard on a consolidated record.

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*See order issued March 18, 1966 denying reconsideration, etc., 35 FPC 397.

On December 22, 1965, TGT filed an answer giving at least four reasons for opposing Red Snapper's motion to consolidate: First, TGT argues that consolidation will unduly delay the hearing on its application and keep it from being able to place in service by November 1966 the facilities for which authorization is requested in Docket No. CP65-356. Since the hurricane season prevents construction after the beginning of September, TGT points out that it has only eight months in which to obtain a certificate, order the materials, and construct the facilities in time to use them for the 1966-67 heating season. TGT avers that it has expedited its hearing by having furnished a great deal of information to all parties to the proceeding as a result of prehearing conferences held in October and November of 1965 and by having already served its direct testimony and exhibits on all parties. Barring the consolidation requested by Red Snapper, TGT believes it could obtain an early decision, but TGT states that Red Snapper has established a reputation for tardiness in fulfilling its promises and obligations. TGT documents this accusation by noting that Red Snapper in its petition to intervene in Docket No. CP65-356 promised to file an application "within the near future" but such application wasn't actually filed until six months thereafter. Likewise, Red Snapper had to request a three-week extension of time for the preparation and service of its answering testimony in the proceeding in Docket No. CP65-356.[1]

Second, TGT claims that Red Snapper's application is so deficient in failing to conform to the Commission's Regulations under the Natural Gas Act, particularly Section 157.14 thereof, that the application is not worthy of consideration and ought to be rejected. Among other things, TGT claims that Red Snapper proposes to spend $127 million to construct a pipeline system to transport natural gas and liquid hydrocarbons for unnamed and unknown onshore customers who supposedly have contracts with unknown producers who apparently have unknown quantities of reserves in unknown locations offshore. TGT also notes that any customers using Red Snapper's transportation service will have to obtain certificate authority to connect their facilities with those of Red Snapper and that any producers who might sell gas to such customers would have to obtain certificate authority to make the sales. Thus, according to TGT, Red Snapper's application depends on contracts not yet negotiated and certificates not yet requested.

Third, TGT contends that Red Snapper's application is neither mutually exclusive nor necessarily competitive with TGT's application and that Red Snapper itself made such statements in its petition to intervene in Docket No. CP65-356. TGT further points out that, since Red Snapper has referred to TGT's reserves as insignificant in comparison with the total reserves available to Red Snapper's proposed pipeline system, there is no reason why issuance of a certificate to TGT would preclude issuance of a certificate to Red Snapper. TGT argues that there is no merit to Red Snapper's claim that its proposal presents an alternative to TGT's proposal in Docket No. CP65-356 because Red Snapper has not proposed either to attach TGT's reserves or to deliver gas to any point where TGT wants gas injected into its pipeline system. Thus, TGT argues that a consolidated hearing on Red Snapper's and TGT's applications is neither required nor warranted.

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[1] This extension was granted by the Examiner's notice of extension of time issued December 23, 1965, in Docket No. CP65-356.

Fourth, TGT cites Section 157.11 of the Commission's Regulations and contends that a proper interpretation of this provision requires the Commission to render a final decision on TGT's application prior to scheduling a hearing on Red Snapper's application because TGT's application was scheduled for formal prehearing conferences commencing on October 12, 1965, but Red Snapper's application was not filed until December 1, 1965, or 35 days after the 15-day limitation provided in Section 157.11 for the filing of competitive applications. TGT contends that, since Red Snapper has given no reason for delaying the filing of its "alternative" proposal, there is no valid excuse for waiving Section 157.11 of the Commission's Regulations just to accommodate Red Snapper.

We believe it is in the public interest to grant Red Snapper's motion to consolidate its application in Docket No. CP66–168 with TGT's application in Docket No. CP65–356. We shall consider each of TGT's arguments in opposition to Red Snapper's motion in the order presented by TGT. TGT's contention that consolidation will delay the hearing on its application is not persuasive because, as the Examiner observed in his order granting Red Snapper's request for extension of time (mimeo p. 2):

> * * * It appears *prima facie* that the Red Snapper affirmative evidence to be served December 29, 1965, may be admissible evidence in this proceeding whether or not Docket No. CP66–168 is consolidated herewith.

Further, we note that TGT's answer to Red Snapper's motion fails to take exception to Red Snapper's statement that the offshore reserves which TGT proposes to attach to its system in Docket No. CP65–356 are not relied upon by TGT to satisfy its market requirements for the 1966-67 heating season. Red Snapper's statement is additionally borne out by TGT's application in Docket No. CP66–180 where TGT seeks authorization to expand its system annual average day capacity by 176,000 Mcf to serve its customers' requirements for the 1966-67 heating season *without* reliance upon the gas reserves which it proposes to attach to its system in Docket No. CP65–356.

TGT's argument that Red Snapper's application is so lacking in specificity as to be unworthy of consideration is interrelated with its contention that Red Snapper's application fails to present a project which is an alternative to TGT's proposal or one which is competitive, or mutually exclusive with TGT's proposal. While we adhere to our recent holdings[2] to the effect that applicants must comply with our Regulations, particularly Section 157.14 thereof, we are also under a duty[3] to consider alternative proposals which may be in the public interest. Although Red Snapper's application apparently does not name the companies for whom it expects to render a transportation service, it is a fact, as shown by the map accompanying Red Snapper's motion to consolidate, that Red Snapper's proposed facilities would come in close proximity to the five fields which TGT proposes to connect to its system. The mere fact that TGT disclaims any interest in employing Red Snapper to transport its gas does not relieve us of our obligation to consider Red Snapper's alternative offer to transport gas for other companies.[4]

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[2] *Transwestern Pipeline Company, et al.,* Docket No. G–20464, *et al.,* Opinion No. 472, issued August 31, 1965, 34 FPC 659, pp. 664, 665; *Natural Gas Pipeline Company of America, et al.,* Docket No. CP62–243, *et al.,* Opinion No. 474, issued September 9, 1965, 34 FPC 771, pp. 785–787; order issued November 29, 1965, in *Pacific Northwest Pipeline Corporation, et al.,* Docket No. G–13017, *et al.,* 34 FPC 1385, p. 1386.

[3] *City of Pittsburgh* v. *F.P.C.,* 237 F. 2d 741, 751 (CADC); *Michigan Consolidated Gas Co.* v. *F.P.C.,* 283 F. 2d 204, 224–226 (CADC), cert. denied, 364 U.S. 913; *Scenic Hudson Preservation Conference, et al.* v. *F.P.C.,* 354 F. 2d 608, at p. 612, (CA2–1965).

TGT's fourth contention is that Red Snapper's application in Docket No. CP66–168 was filed so long after the 15-day limitation on the filing of competitive applications that we are required by Section 157.11 of our Regulations to proceed to a final decision on TGT's application in Docket No. CP65–356 prior to scheduling a hearing on Red Snapper's application. We do not think that this provision of our Regulations is applicable in the circumstances of this proceeding because Red Snapper's petition to intervene in Docket No. CP65–356 stated that it would file "within the near future" an application which would propose an alternative method of transporting TGT's offshore reserves to TGT's main line on shore. Red Snapper was permitted to intervene in the proceeding regarding TGT's application and was represented by counsel at all of the prehearing conferences. Red Snapper's counsel made it clear that Red Snapper would present evidence in support of its proposal, and dates for the filing of such testimony and exhibits were fixed by the Presiding Examiner at the prehearing conference held on November 10, 1965. TGT has thus known from the commencement of the prehearing conferences that evidence concerning Red Snapper's proposal would be offered in the hearing on its application. Under these circumstances we do not think that granting Red Snapper's motion to consolidate its application in Docket No. CP66–168 with TGT's application in Docket No. CP65–356 will violate the intent of Section 157.11 of our Regulations, which is designed to prevent a competitor from deliberately and unfairly inducing an element of delay and surprise into its competitive or alternative proposals by dilatorily filing an unexpected and entirely new application well after the hearing on the original application has begun.

On December 23, 1965, the Public Service Commission of the State of New York filed a notice of intervention in Docket No. CP66–168. Petitions seeking leave to intervene in the proceeding in Docket No. CP66–168 were timely filed as indicated in the following tabulation:

Names of petitioners	*Date of filing*
Consolidated Edison Co. of New York, Inc	Dec. 23, 1965
Consolidated Gas Supply Corp., The East Ohio Gas Co., Lake Shore Pipe Line Co., The Peoples Natural Gas Co., and The River Gas Co. (joint petition)	Dec. 27, 1965
Long Island Lighting Co	Do.
Natural Gas Pipeline Co. of America	Do.
Philadelphia Electric Co	Do.
Philadelphia Gas Works Division of The United Gas Improvement Co	Dec. 23, 1965
Public Service Electric and Gas Co	Dec. 27, 1965
Tennessee Gas Transmission Co	Do.
Transcontinental Gas Pipe Line Corp	Do.
Trunkline Gas Co	Do.
The Brooklyn Union Gas Co	Dec. 23, 1965
United Fuel Gas Co	Dec. 27, 1965

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[4] As the court stated in the *City of Pittsburgh* case *supra*, the fact that we may have no authority to force an alternative to be carried out does not mean that we are without power to reject a given application (237 F. 2d 741, 751, n. 28). See also *Midwestern Gas Transmission Co.* v. *F.P.C.*, 258 F. 2d 660 (CADC), vacated as moot, 358 U.S. 280, where the court stated that it was unrealistic to assume that a prospective customer would fail to purchase gas from a competing pipeline company after the competitor had become a certificated supplier (258 F. 2d 666).

The Commission finds:

(1) It is in the public interest in the administration of the Natural Gas Act that Red Snapper Pipe Line Company's motion to consolidate its application in Docket No. CP66–168 with Tennessee Gas Transmission Company's application in Docket No. CP65–356 be granted.

(2) It is desirable to allow the companies which have filed petitions to intervene to become interveners in this proceeding in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) Red Snapper Pipe Line Company's motion to consolidate, filed December 13, 1965, is granted and the applications for certificates of public convenience and necessity filed by Tennessee Gas Transmission Company in Docket No. CP65–356 and by Red Snapper Pipe Line Company in Docket No. CP66–168 are hereby consolidated for the purposes of hearing and decision thereon.

(B) The above-named petitioners are permitted to become interveners in this consolidated proceeding subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and *provided, further,* that the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) All interveners who have filed petitions to intervene in either of the dockets consolidated herein shall be considered participants in both dockets, to the extent that their alleged interests are affected, without their having to make additional filings with the Commission.

(D) Immediately upon issuance of this order TGT and Red Snapper shall serve copies of their direct testimony and exhibits, heretofore served on all parties to the proceeding in Docket No. CP65–356, upon the additional petitioners permitted by this order to intervene herein.

(E) The dates listed below for the filing of additional testimony and exhibits, as set forth in Presiding Examiner Robert M. Weston's order of procedure issued December 23, 1965, are adopted for the consolidated proceeding provided for herein:

January 19, 1966—Service of evidence by Red Snapper and all other parties in answer to TGT's evidence.

February 2, 1966—Service of rebuttal evidence by TGT.

February 15, 1966—Commencement of hearing.

Motions for extensions of time or for modification or clarification of these dates shall be addressed to Examiner Weston.

(F) The hearing provided for in paragraph (E) above shall be held commencing February 15, 1966, at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C. 20426.

Commissioner O'Connor *concurring* in result only.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-91

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1966)

On December 7, 1965, Transcontinental Gas Pipe Line Corporation (Petitioner) filed in Docket No. CP66-91 a petition to amend the certificate of public convenience and necessity issued by the Commission on November 19, 1965, 34 FPC 1351, in said docket to permit delivery and sale of an additional 200 Mcf per day to Pennsylvania Gas Management Company (Pennsylvania Gas), an existing customer, as more fully described in the petition to amend.

The Commission's order issued in Docket No. CP66-91 on November 19, 1965, authorized additional sales by Petitioner to eight of its existing customers, who had requested such service subsequent to the filing of Petitioner's expansion application in Docket No. CP65-181, which application is presently involved in a formal hearing. Pennsylvania Gas now seeks an additional 200 Mcf per day.

Pennsylvania Gas' total allocation will be 10,900 Mcf of natural gas per day, upon the granting of the present petition to amend. The incremental volumes will be sold by Pennsylvania Gas to The New Jersey Zinc Company, which is engaged in the manufacture of anhydrous ammonia.

No new facilities will be required to render the proposed service.

The additional volumes will be sold under Petitioner's Rate Schedule CD-3.

Due notice of the filing of the petition to amend was published in the Federal Register on December 28, 1965 (30 F.R. 16173). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP66-91 on November 19, 1965, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Transcontinental Gas Pipe Line Corporation in Docket No. CP66-91 on November 19, 1965, is amended by authorizing the sale of an additional 200 Mcf of natural gas per day to Pennsylvania Gas Management Company.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. CI65-539; SINCLAIR OIL & GAS COMPANY, DOCKET NO. CI65-543; SUN OIL COMPANY, DOCKET NO. CI65-583; KERR-MCGEE CORPORATION, DOCKET NO. CI65-605; GULF OIL CORPORATION, DOCKET NO. CI65-609

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, SEVERING PROCEEDINGS, ACCEPTING OFFERS OF SETTLEMENT, ACCEPTING FPC GAS RATE SCHEDULES FOR FILING, AND REQUIRING FILING OF FPC GAS RATE SCHEDULE

(Issued January 14, 1966)

Applicants herein have filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of New Mexico to Natural Gas Pipeline Company of America, all as more fully set forth in the Appendix hereto and and in the respective applications.

Each Applicant has submitted a settlement proposal and has offered to accept 16.608 cents per Mcf at 14.65 psia, including upward Btu adjustment from a base of 1,000 Btu's per cubic foot for 1038-Btu gas.[1] By order issued August 5, 1965, 34 FPC 424, in Docket No. AR61-1, *et al.*, Applicants were ordered to show cause why they should not receive permanent certificate authorization at the rates prescribed in Opinion No. 468, 34 FPC 159. Said opinion, as modified by Opinion No. 468-A, 34 FPC 1068, prescribes an initial rate for gas sold in the New Mexico portion of the Permian Basin of 15.5 cents per Mcf plus applicable state and local production taxes in effect on September 1, 1965. The opinion, as modified, also provides for upward Btu adjustment from a maximum standard of 1,050 Btu's per cubic foot and downward Btu adjustment from a minimum standard of 1,000 Btu's per cubic foot.

Each Applicant has submitted a settlement proposal and has offered to accept a permanent certificate at the applicable area base rate of 15.5 cents per Mcf, plus applicable state and local production taxes in effect as of September 1, 1965, while retaining the upward and downward Btu price adjustment provisions. They also agree to a moratorium on increased rates until January 1, 1968, as provided by Opinion No. 468. Applicants' willingness to accept certificates with the aforementioned conditions is contingent upon the severance of their applications from the proceeding on the order to show cause and upon the issuance of certificates pursuant to the statutory hearing procedure.

Applicants' contracts contain quality standards which conform to those standards set forth in Opinion Nos. 468 and 468-A. In their settlement proposals Applicants adopt the rate schedule quality statement filed in Docket No. CI65-603 by Marathon Oil Company, operator of the jointly-owned processing plant, which statement shows that the quality of the gas, based upon plant design specifications, is within the quality standards prescribed in Opinion Nos. 468 and 468-A. Marathon Oil Company and other producers have received permanent certificates pursuant to settlement proposals to sell gas under similar settlement proposals.

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[1] Each contract also provides for a downward Btu adjustment from a base of 1,000 Btu's per cubic foot.

Applicants' proposals are consistent with the Commission's opinion determining just and reasonable rates for producers in the Permian Basin on an area basis and afford an appropriate opportunity for the issuance of certificates under conditions which will provide a complete and effective plan of regulation. The rates to which Applicants have agreed and the moratorium by which they have agreed to abide correlate to those required by Opinion Nos. 468 and 468–A. Accordingly, the applications herein will be severed from the proceeding on the Order to Show Cause in Docket No. AR61–1, *et al.*, and certificates of public convenience and necessity will be issued under the conditions prescribed in the area rate opinion.

After due notice, no petitions to intervene, notices of intervention or protests to the granting of the applications have been received.

At a hearing held on January 13, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales of natural gas hereinbefore described, as more fully described in the Appendix hereto and in the respective applications, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the offers of settlement submitted by Applicants should be accepted and that the applications herein should be severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61–1, *et al.*

(5) The sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedules submitted by Applicants in Docket Nos. CI65–539, CI65–583 and CI65–605 should be accepted for filing and that Applicants in Docket Nos. CI65–543 and CI65–609 should be required to file FPC gas rate schedules.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing the sales of natural gas by Applicants in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the Appendix hereto and in the respective applications and offers of settlement in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission thereunder.

(C) The grant of the certificates issued by paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The offers of settlement submitted by Applicants are accepted and the applications herein are severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61-1, *et al.*

(E) Applicants shall comply with the requirements of Opinion Nos. 468 and 468-A, and particularly:

(a) The initial rate shall be the applicable area rate prescribed in Opinion No. 468, as modified by Opinion No. 468-A, or the contract rate, whichever is lower, and

(b) No increase in rate in excess of that provided in (a) above shall be filed before January 1, 1968.

(F) The FPC gas rate schedules submitted by Applicants in Docket Nos. CI65-539, CI65-583 and CI65-605 are accepted for filing to be effective on the date of initial delivery and are designated as shown in the Appendix hereto. Applicants in Docket Nos. CI65-543 and CI65-609 shall each file three copies of its related gas sales contracts as FPC gas rate schedules.

(G) Each Applicant shall file three copies of a revised billing statement specifying a rate of 15.5 cents per Mcf at 14.65 psia plus the computed amount of tax reimbursement.

(H) Within 90 days of initial delivery each Applicant shall file three copies of a rate schedule quality statement in the form provided by Opinion No. 468-A.

APPENDIX

Purchaser: Natural Gas Pipeline Company of America.
Location: Indian Basin Area, Eddy County, New Mexico.

Docket No. and filing date	Applicant	Description and date of instrument	Designation	
			Rate schedule	Supplement
CI65-539 12-9-64	Union Oil Co. of California	Contract 9-10-64	96	
CI65-543 12-9-64	Sinclair Oil & Gas Co.	Contract 9-10-64 [1]		
CI65-583 12-21-64	Sun Oil Co.	Contract 9-10-64	185	
		Amendment 4-6-65 [2]	185	1
CI65-605 12-24-64	Kerr-McGee Corp.	Contract 9-10-64	86	
CI65-609 12-28-64	Gulf Oil Corp.	Contract 9-10-64 [1]		

[1] Submitted as an exhibit to the certificate application.
Corrects error in lease description in contract.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NOS. CP65-165, CP65-393

ORDER GRANTING PETITIONS TO INTERVENE, PERMITTING WITHDRAWAL OF PETITION TO AMEND, DENYING MOTION TO CONSOLIDATE, REQUIRING SUBMITTAL OF TESTIMONY, AND SETTING DATE FOR HEARING

(Issued January 17, 1966)

On June 9, 1965, Florida Gas Transmission Company (Florida Gas) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of natural gas facilities, and (2) the transportation of additional quantities of natural gas to Florida Power & Light Company. Notice thereof was issued June 15, 1965 (30 F.R. 8078). Pursuant to said notice, the following persons filed notices of intervention or petitions to intervene in the above-entitled proceedings:

Notice of Intervention and Date

Florida Public Service Commission, June 30, 1965.

Petitions to Intervene and Date

Sun Oil Company, July 9, 1965.
Austral Oil Company, July 12, 1965.
Gainsville Gas Company, July 12, 1965.
Florida Power & Light Company, July 12, 1965.
Pan American Petroleum Corporation, July 12, 1965.
Florida State Board of Health, October 8, 1965.
Florida Power Corporation, November 5, 1965.

The petitions to intervene of the above-named persons, with the exception of Sun Oil Company (Sun), were unopposed by Florida Gas. The Commission finds that each expresses sufficient interest to justify intervention herein.

On July 19, 1965, Florida Gas filed an answer to Sun's petition to intervene.

Florida Gas alleged that Sun showed neither the "necessary or appropriate" interest to intervene, nor "any other interest of such nature that its participation may be in the public interest." We do not agree. Sun presently sells gas produced in Texas and Louisiana to Florida Power & Light Company and to Florida Power Corporation. In both instances, Sun delivers the gas at central points in the producing fields, from which points the gas is transported by Florida Gas to the power companies. The prices received by Sun for its sales of gas to Florida Power & Light Company and to Florida Power Corporation are directly related to the transportation charges of Florida Gas. Sun's interests are clearly within the purview of § 1.8 of the Commission's Rules of Practice and Procedure. Were we to rule otherwise, any modification of Florida Gas' proposed initial rate which affects the price Sun received for its gas would not afford Sun the participation contemplated by both the Administrative Procedure Act and the Natural Gas Act.

Florida Gas further contends that Sun's participation will convert this proceeding into a rate case. This contention is incorrect. As we concluded in our order of October 21, 1965, 34 FPC 1195, which denied Sun's motion to consolidate the present proceeding with Docket No. RP66-4, the present proceeding involves questions of law and fact which are different from the rate matters involved in Docket No. RP66-4. The present proceeding is instituted pursuant to § 7 of the Natural Gas Act. The matters germane to a § 7 proceeding and the degree and kind of evidence required in a certificate case are different from those in a rate case. It is incumbent upon the hearing examiner to entertain in this proceeding only such evidence as may be relevant to a certificate case. Accordingly, we will permit Sun's intervention herein.

On October 21, 1965, Florida Gas filed a petition to amend its certificate of public convenience and necessity issued in Docket No. CP65-165 on June 8, 1965, 33 FPC 1223. Sun, on November 12, 1965, moved to consolidate Florida Gas' petition to amend with the present proceeding. In support of its motion, Sun argued that the present proceeding involves the duplication of facilities already authorized in Docket No. CP65-165, and that to avert such duplication of facilities "* * * a coordinated construction project would be required in the interest of economy." Sun further stated that "it is readily apparent that the need for facilities as proposed in the petition to amend the Docket No. CP65-165 authorization, and particularly the line to the East White Lake Field, depends in its entirety on whether authorization is forthcoming in Docket No. CP65-393." On November 30, 1965, Florida Gas filed a notice to withdraw its petition to amend, to which Sun filed objections on December 9, 1965. In its notice of withdrawal, Florida Gas stated, "Florida Gas, to meet its Florida market and gas supply commitments, must now proceed with the construction of the supply lateral facilities. It cannot defer construction further."

The withdrawal of pleadings subsequent to the commencement of a hearing is not a matter of right, see § 1.11(d) of the Commission's Rules of Practice and Procedure, but is permitted only where such withdrawal is in the public interest. If there were no need for Florida Gas' construction of the facilities authorized in Docket No. CP65-165, then we would agree with Sun that the public interest requires the consolidation of Florida Gas' petition to amend with the present proceeding. However, there is no assurance that a certificate of public convenience and necessity will issue to Florida Gas in this proceeding. If, after formal hearings, a certificate is denied to Florida Gas, we would cause a significant delay in the construction and operation of facilities and services already held to be in the public interest. Even if after formal hearings a certificate is issued to Florida Gas in Docket No. CP65-393, the delay caused by suspending for the duration of this proceeding the construction and operation of the facilities certificated in Docket No. CP65–165 would deprive Florida Gas of its present ability to meet the market needs exhibited in Docket No. CP65–165. Insofar as the public has need for this additional gas, this clearly would be contrary to the public interest. Sun's objections, alleging that the construction of both the proposed facilities and the facilities authorized in Docket No. CP65–165 will cause an unnecessary expenditure of approximately $3,000,000 may be raised in the formal hearings and in Florida Gas' rate case where such questions should be resolved. Sun's motion to consolidate will therefore be denied, and Florida Gas will be permitted to withdraw its petition to amend.

In order to expedite the disposition of this proceeding, it is desirable that Florida Gas file with the Commission and serve on all parties written direct testimony in support of its application. In addition to submitting testimony in support of the exhibits required by § 157.14 of the Commission's Rules and Regulations under the Natural Gas Act, and such other evidence as Florida Gas may deem necessary, Florida Gas should show cause why Pan American Petroleum Company (Pan Am) and Austral Oil Company (Austral) should not be subject to the provisions of the Natural Gas Act. Although we shall not now order Pan Am and Austral to file similar presentations, we welcome such presentations from these parties.

The Commission finds:

(1) It is desirable and in the public interest that all of the above-named petitioners be permitted to intervene in this proceeding.

(2) The objections of Sun Oil Company to Florida Gas Transmission Company's notice of withdrawal are without merit.

(3) This proceeding will be expedited by providing for the service of direct testimony by Florida Gas Transmission Company prior to the commencement of formal hearings.

(4) A date for the commencement of formal hearings should be set.

The Commission orders:

(A) Each of the above-named petitioners is permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however*, that the participation of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The objectives of Sun Oil Company to Florida Gas Transmission Company's notice of withdrawal are overruled.

(C) Florida Gas Transmission Company, pursuant to § 1.11(d)(1) of the Commission's Rules of Practice and Procedure, is granted permission to withdraw its petition to amend the certificate of public convenience and necessity issued to Florida Gas Transmission Company in Docket No. CP65–165.

(D) Sun's motion to consolidate the Florida Gas Transmission Company's petition to amend its certificate in Docket No. CP65–165 with the proceedings in Docket No. CP65–393 is denied.

(E) Florida Gas Transmission Company shall file its direct testimony and exhibits with the Commission on or before February 1, 1966. Such direct testimony and exhibits shall (1) fully explain Florida Gas Transmission Company's application, (2) conform to the Commission's Rules and Regulations under the Natural Gas Act, and (3) show cause why Pan American Petroleum Corporation and Austral Oil Company should not be subject to the provisions of the Natural Gas Act.

(F) A hearing shall be held before a hearing examiner of the Commission designated by the chief examiner. Such hearing shall commence in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D. C. 20426, at 10:00 a.m. (EST) on February 28, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

JAKE L. HAMON, ET AL., DOCKET NO. RI61-408, ET AL.

ORDER AMENDING ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL

(Issued January 17, 1966)

By order issued November 5, 1965, 34 FPC 1243, in the above-entitled proceedings, the Commission approved a settlement proposal filed by Jake L. Hamon, *et al.* (Hamon) covering settlement rates under twenty one of Hamon's rate schedules, including sales under Hamon's FPC Gas Rate Schedule No. 19 which was involved in Docket No. RI60-60. It has come to our attention that by order issued August 7, 1963, in Docket No. G-2657, *et al.*, Edwin L. Cox (Cox) was substituted for Hamon as a respondent in Docket No. RI60-60. That order also accepted the surety bond filed by Cox wherein he assumed all of Hamon's refund obligations in Docket No. RI60-60 and relieved Hamon of any refund obligation therein.

In light of the above, we think it appropriate to amend our settlement order of November 5, 1965, so as to delete Docket No. RI60-60 therefrom, and to relieve Hamon of any obligations it might otherwise have had under the settlement in connection with his FPC Gas Rate Schedule No. 19 or Docket No. RI60-60.

The Commission orders:

For the reasons set forth above, our order of November 5, 1965, in the above-entitled proceedings is modified to delete all reference to Hamon's FPC Gas Rate Schedule No. 19 and Docket No. RI60-60 and to remove all obligations provided for therein with respect thereto.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HIGH PLAINS NATURAL GAS COMPANY, DOCKET NO. CP65-401; WARREN PETROLEUM CORPORATION (OPERATOR), DOCKET NO. CI64-1466 (G-4165), RI64-602

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT, TERMINATING CERTIFICATE, SEVERING PROCEEDING, TERMINATING RATE PROCEEDING, APPROVING RATE SETTLEMENT, AND ACCEPTING FOR FILING NOTICE OF TARIFF CANCELLATION

(Issued January 17, 1966)

On June 16, 1965, High Plains Natural Gas Company (High Plains) filed in Docket No. CP65-401 an application together with a supplement thereto on August 13, 1965, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and the sale of natural gas in interstate commerce to Canadian Valley Gas Company for resale, all as more fully set forth in the application and supplement thereto.

High Plains seeks authority for the abandonment of its interstate facilities and service by the installation of valves to separate the Texas (District No. 10) and Oklahoma (Panhandle Area) portions of its natural gas transmission system. The valves in the said line were installed by High Plains on January 7, 1964, and there has not been any interstate flow of natural gas in the system since late in January, 1964.

The facilities to be abandoned by High Plains consist of approximately 212 miles of 6⅝-inch and 4½-inch transmission pipelines, together with measuring facilities, valves and appurtenances, located in Wheeler, Hemphill, Lipscomb, Ochiltree and Hansford Counties, Texas, and in Ellis and Woodward Counties, Oklahoma. High Plains also operates some 57 miles of distribution lines in conjunction with the transmission pipelines.

The only connection between High Plains' Texas and Oklahoma properties is a single 6⅝-inch pipeline crossing the Texas-Oklahoma border between Higgins, Texas and Shattuck, Oklahoma. High Plains states that the existing transmission system lacks capacity to handle the increased volumes required by its Oklahoma customers (being one certificated sale for resale, some direct sales to ultimate consumers through three distribution systems owned by Applicant in Oklahoma, a direct sale to the Western State Hospital at Fort Supply, Oklahoma, and a minor number of rural customers). High Plains further states that installation of additional capacity is uneconomical and that acquisition of new gas supplies nearer its markets is economical.

High Plains proposes to serve its Oklahoma customers from Oklahoma production near its system in Oklahoma, which sources required it to agree there would be no interstate sales or transportation of gas. Similarly with its Texas consumers, sources of gas in Texas were available only on condition that none of the gas would be transported or sold in interstate commerce. To meet the requirements of the Oklahoma and Texas suppliers High Plains installed a check valve on the Oklahoma side of its existing transmission line running from Texas into Oklahoma, which prevents the westward flow of any Oklahoma gas into Texas, and has installed and closed a plug valve on the Texas side of the same existing transmission line, which plug prevents the eastward flow of any Texas gas into Oklahoma. High Plains asserts it has been able to greatly increase its reserves and its dependability of service to its wholesale and retail customers in both states by terminating the interstate feature of its operations.

High Plains proposes to abandon the sale of natural gas in interstate commerce to Canadian Valley Gas Company and has filed a notice of cancellation of its FPC Gas Tariff Original Volume No. 1. In lieu of the present gas tariff and service agreement High Plains proposes to continue the service of gas under a new contract with Canadian Valley Gas Company on a wholly intrastate basis.

With respect to the actions of High Plains in terminating the interstate flow of natural gas through its interstate system, and the continuation of its operation of two intrastate systems, without having obtained permission and approval of the Commission, it is clearly in violation of the Natural Gas Act and the Rules and Regulations of the Commission related thereto, and issuance of this order shall not be construed nor interpreted as a condonation of Applicant's illegal actions.

Due notice of the filing of the application in Docket No. CP65-401 was published in the Federal Register on June 26, 1965 (30 F.R. 8243). No petition to intervene, notice of intervention or protest to the granting of the application has been filed in said docket.

On June 9, 1964, Warren Petroleum Corporation (Operator) (Warren) filed in Docket No. CI64-1466 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to High Plains from the tailgate of Warren's McLean (Sitter) Gasoline Plant in Wheeler County, Texas, all as more fully set forth in the application.

The subject sale by Warren was authorized in Docket No. G-4165 on May 31, 1956, and made pursuant to the provisions of a gas contract dated December 9, 1953, designated by the Commission as Warren's FPC Gas Rate Schedule No. 29.

After due notice published in the Federal Register on June 23, 1964 (29 F.R. 7956), an order was issued on August 28, 1964, in Docket No. CI64-1466 authorizing abandonment of the sale of natural gas to High Plains as requested. The said proceeding was reopened by order of the Commission issued October 23, 1964, 32 FPC 1179, and the City of Perryton, Texas, was granted intervention pursuant to its request filed September 24, 1964.

The City of Perryton, Texas, filed on March 8, 1965, a motion to reinstate the order of the Commission issued August 28, 1964, granting Warren authorization to abandon the sale of natural gas to High Plains.

No petition to intervene, notice of intervention or protest to the granting of the application, other than that of the City of Perryton has been filed in Docket No. CI64-1466.

Following expiration of its 1953 contract with High Plains, Warren on January 10, 1964, filed an unilateral rate increase from 10.0 cents per Mcf to 17.0 cents per Mcf, which was suspended in Docket No. RI64-602[1] and collected subject to refund therein from October 29, 1964. Thereafter, on April 28, 1964, the parties executed a new contract which provides that the gas is to be disposed of on an intrastate basis. The contract includes a two-block rate form under which it is estimated that High Plains' annual average cost will be approximately 14.34 cents per Mcf. Warren has agreed to refund, with applicable interest, the amounts collected in Docket No. RI64-602 in excess of the rate under its new contract. Warren will refund approximately $11,000, exclusive of interest, under its proposal. In view of the unusual circumstances here, we believe that the settlement of the refund issue as proposed is appropriate.

High Plains has indicated in its application that it would flow through a "portion" of the amounts proposed to be refunded by Warren, but the specific details as to disposition of all of such refund amounts have not been submitted. For the reasons set forth in our order in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall require Warren to retain the refund amounts until further order of the Commission directing the nature of their disposition and shall require that a report be submitted by High Plains showing its proposed disposition of the entire refund to be received from Warren.

At a hearing held on January 13, 1966, the Commission on its own motion received and made a part of the record in these proceedings all evidence including the applications, supplement and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, High Plains Natural Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 10, 1963, in Docket No. CP63-226 (29 FPC 721).

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[1] Consolidated with Docket No. AR64-1, *et al.*

(2) Applicant, Warren Petroleum Corporation (Operator), is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities and service proposed to be abandoned by High Plains as hereinbefore described and as more fully described in the application herein are subject to the jurisdiction of the Commission, and such abandonments are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonment of service and of the aforesaid facilities by High Plains are permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that High Plains' Notice of Cancellation of its FPC Gas Tariff, Original Volume No. 1, be accepted for filing and that said acceptance and cancellation be effective on the date of the issuance of this order.

(6) The sale of natural gas proposed to be abandoned by Warren as hereinbefore described, all as more fully described in the application in this proceeding, is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment by Warren hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate of public convenience and necessity heretofore issued in Docket No. G–4165 on May 31, 1956, should be terminated.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Docket No. RI64–602 should be severed from the proceeding in Docket No. AR64–1, *et al.*, that the proposed settlement be approved and that the proceeding in Docket No. RI64–602 be terminated.

The Commission orders:

(A) Permission for and approval of the abandonment of facilities and service as requested by High Plains, as hereinbefore described, and as more fully described in the application filed in this proceeding, is granted.

(B) The Notice of Cancellation of High Plains' FPC Gas Tariff, Original Volume No. 1, is accepted for filing and the acceptance and cancellation are effective on the date of the issuance of this order.

(C) Permission for and approval of the abandonment of the sale of natural gas by Warren to High Plains, as hereinbefore described, and as more fully described in the application in this proceeding, is granted.

(D) The certificate of public convenience and necessity heretofore issued to Warren in Docket No. G–4165 on May 31, 1956, is terminated.

(E) The proposed settlement is approved in accordance with the provisions of this order.

(F) Warren shall compute the difference between the rate collected subject to refund and the settlement rate to the date of this order for sales to High Plains in Docket No. RI64–602, with applicable interest to the date of this order. and shall within 30 days from the date of issuance of this order submit a report to the Commission, with a copy to High Plains, setting out the amount of refunds (showing separately the principal and applicable interest), the basis used for such determination, the period covered, and within ten days thereafter a letter from High Plains agreeing to the correctness of such amounts.

(G) Warren shall retain the amounts shown in the report required under paragraph (F) above, subject to further order of the Commission directing the disposition of those amounts.

(H) If Warren elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 4½% per annum on all funds thus available from March 1, 1966, to date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(I) If Warren elects to deposit the retained refunds in a special escrow account, Warren shall tender for filing on or before March 1, 1966, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon High Plains. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Warren and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Warren, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(4) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(J) High Plains shall, within 30 days after its receipt of the report from Warren referred to in Paragraph (F) above, file a report with the Commission showing High Plains' proposed disposition of the amounts involved.

(K) Upon notification by the Secretary of the Commission that Warren has complied with the terms and conditions of this order, Docket No. RI64–602 will be considered severed from the proceeding in Docket No. AR64–1, *et al.*, and the rate proceeding in Docket No. RI64–602 will be considered terminated.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7254

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued January 17, 1966)

Otter Tail Power Company (Applicant), a corporation, organized under the laws of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota with its principal business office in Fergus Falls, Minnesota, filed application on November 17, 1965, for authorization pursuant to Section 204 of the Federal Power Act to issue short term unsecured Promissory Notes in an aggregate principal amount not to exceed $10,000,000 at any one time.

The proposed notes will be issued from time to time prior to December 31, 1968 for periods of one year or less and will be payable to such commercial bank or banks from which the Applicant may borrow. Applicant will pay no finder's fee or other fee, commission or renumeration in connection with the issuance of the aforesaid notes. The notes will not be issued pro-rata to existing holders of securities and will not have voting rights.

The interest rate for each borrowing will be determined by an agreement between the Applicant and the lender as respective loans are made at a rate contemplated to be the current Minneapolis prime rate which is the rate offered by commercial banks and which is currently 5% for such loans. However, the interest rate to be paid is not to exceed 5½% per annum.

Applicant states that the purpose for which such unsecured notes are to be issued is for the renewal of the company's bank loans incurred and to be incurred in 1965 to finance temporarily the balance of the 1965 construction program and to provide funds to finance temporarily the company's 1966-68 construction program, prior to arranging for long-term financing, thereby enabling the company more effectively to plan such long-term financing and to control the timing thereof.

The Applicant's 1966-68 construction program is summarized as follows:

Classification	1966	1967	1968
Electric production	$216, 000	$299, 000	$354, 000
Electric transmission line and substations	3, 551, 000	3, 630, 000	2, 965, 000
Electric distribution	1, 715, 000	1, 300, 000	1, 300, 000
Electric general and other utility	788, 000	584, 000	664, 000
Total	6, 270, 000	5, 813, 000	5, 283, 000

Written notice of the application has been given to the Minnesota Railway and Warehouse Commission, North Dakota Public Service Commission and South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on December 8, 1965 (30 F.R. 15187), stating that any person desiring to be heard or to make any protests with reference to the application should file a petition or protest on or before December 17, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Com-

mission as heretofore described and set forth in the Commission's order issued October 25, 1957, *Otter Tail Power Company*, Docket No. E-6776 (18 FPC 538).

(2) The proposed issuance of promissory notes in the aggregate principal amount of $10,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of promissory notes in the aggregate principal amount of $10,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and proposed issuance, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $10,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is granted upon the condition that all notes issued pursuant thereto shall be issued prior to December 31, 1968 and shall mature within one year from the date of issuance.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

QUINAULT LIGHT COMPANY, PROJECT NO. 1487

ORDER ACCEPTING SURRENDER OF LICENSE (MAJOR)

(Issued January 17, 1966)

On July 29, 1965, Quinault Light Company, licensee for major Project No. 1487, filed under Section 6 of the Federal Power Act for surrender of its license for the project located on Zeigler Creek, a tributary to Quinault River, in Grays Harbor County, Washington, and affecting lands of the United States within the Olympic National Forest.

According to the application, the licensee is purchasing power from Bonneville Power Administration, the project was put on an inactive reserve status eight years ago and during that period the plant deteriorated and its rehabilitation would not be economically feasible.

Annual charges under the license for the project have been paid through December 31, 1964.

By letter dated November 24, 1965, the Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Olympic National Forest, has reported that the lands of the United States affected by the project have been restored to a condition satisfactory to the Service.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for the project is appropriate as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1487 is hereby accepted, effective as of November 24, 1965, subject to the payment of annual charges under the license for the project through said date in the amount of $16.80 for the costs of administration of Part I of the Federal Power Act and in the amount of $14.33 for the occupancy by the project of lands of the United States within the Olympic National Forest.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WYOMING GAS COMPANY, DOCKET NO. CP66-139

DECLARATION OF EXEMPTION

(Issued January 17, 1966)

Wyoming Gas Company (Applicant) filed an application on November 1, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof, of certain natural gas facilities located in the State of Wyoming, all as more fully set forth in the application.

Applicant, a Maine corporation with its principal place of business in Basin, Wyoming, is engaged in the transportation and sale of natural gas in the State of Wyoming, and in connection therewith sells and delivers natural gas to the public within various municipalities and certain rural areas in Washakie, Big Horn, Park and Hot Springs Counties in Wyoming, including the communities of Basin, Greybull, Manderson, Thermopolis, East Thermopolis and Worland, and to the Empire Oil Company at the Thermopolis and the Magnet Cove Barium Corporation at Greybull, Wyoming.

Applicant purchases natural gas from Montana-Dakota Utilities Co. (Montana-Dakota) at several delivery points along the so-called Riverton Dome-Worland natural gas transmission line of Montana-Dakota. Natural gas purchased from Montana-Dakota for distribution and sale in Thermopolis and East Thermopolis (Docket No. CP65-108) is transported through a 21 mile lateral extending from a point of connection with Montana-Dakota in Hot Springs County, Wyoming, to said communities. All of Applicant's facilities are located in Wyoming, and the natural gas purchased and received from Montana-Dakota, and local producers in Wyoming is consumed in the State of Wyoming.

The Public Service Commission of Wyoming has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates, service and facilities of the Applicant to be exempted and is exercising such jurisdiction.

Wherefore, the Commisson declares, by reason of the foregoing:

> Wyoming Gas Company is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

GULF STATES UTILITIES COMPANY, DOCKET NO. E-7259

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued January 18, 1966)

By order issued January 6, 1966, *supra*, p. 51, in the above-entitled matter, the Commission authorized Gulf States Utilities Company, (Applicant), to issue and sell at competitive bidding $20,000,000, principal amount of First Mortgage Bonds, due 1996, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on January 18, 1966, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Salomon Brothers & Hutzler and Eastman Dillon Union Securities & Co., to purchase the proposed issuance of $20,000,000, principal amount of Bonds, for the price of 100.70999% of principal amount, with an interest rate of 5%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued January 6, 1966, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent

with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued January 6, 1966, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HARRELL DRILLING COMPANY, DOCKET NO. G–17074

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, SEVERING AND TERMINATING PROCEEDING, AND REQUIRING REFUNDS

(Issued January 18, 1966)*

On November 23, 1965, Harrell Drilling Company (Harrell) filed an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and in conformity with the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR 2.56). The offer involves a proposed increased rate for the sale of natural gas to Tennessee Gas Transmission Company (TGT) in the Magnet-Withers Fields, Wharton County, Texas (Texas Railroad Commission District No. 3), under Harrell's FPC Gas Rate Schedule No. 1, at a presently effective rate of 16.16947¢ per Mcf, at 14.65 psia, inclusive of tax reimbursement, being collected subject to refund. The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective, subject to refund, on July 6, 1959, by Harrell filing a proper motion in accordance with the Natural Gas Act. Harrell now proposes a settlement rate of 15.0¢ per Mcf, at 14.65 psia, inclusive of present tax reimbursement, for the remaining term of the contract with TGT. Additionally, Harrell proposes to eliminate the periodic price escalation, price redetermination and favored-nation clauses from the subject rate schedule. However, Harrell reserves the right to file for three-fourths reimbursement of any possible future tax increases.

Approval of the proposed settlement will result in Harrell refunding approximately $18,850, exclusive of interest, and a decrease in its annual revenues of approximately $365 below that which it currently collects and charges TGT for the subject sale of natural gas.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Harrell's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Harrell's rate and rate schedule.

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* This order was adopted December 1, 1965, before Chairman Swidler left the Commission.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Harrell on November 23, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Harrell on November 23, 1965, is hereby approved in accordance with the provisions of this order.

(B) Harrell shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Harrell shall refund to TGT to the date of issuance of this order the difference between the rate collected subject to refund under the rate schedule herein and the settlement rate of 15¢ per Mcf of natural gas at 14.65 psia, with applicable interest computed to the date of this order, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from TGT.

(D) Upon notification by the Secretary of the Commission that Harrell has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order, the above designated proceeding shall be deemed terminated, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(E) The acceptance by the Commission of Harrel's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Harrell including area rate or other similar proceedings.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE MONTANA POWER COMPANY, DOCKET NO. CP66–102

ORDER AUTHORIZING EXPORTATION OF NATURAL GAS

(Issued January 18, 1966)

On October 8, 1965, The Montana Power Company (Applicant) filed in Docket No. CP66–102 an application pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from the United States to Canada for sale and delivery to Border Utilities, Ltd., and Milk River Gas Company, Limited, all as more fully set forth in the application.

Applicant proposes to transport natural gas from its Cobb Storage Field in Toole and Glacier Counties, Montana, to a point on the international boundary between the United States and Canada at Sweetgrass, Montana, and to export gas at that point for sale and delivery to Border Utilities, Ltd., and Milk River Gas Company, Limited. Border Utilities, Ltd., will resell and distribute gas in Coutts, Alberta, Canada, the community adjacent to Sweetgrass, Montana; and Milk River Gas Company, Limited, will resell and distribute gas in Milk River, Alberta, Canada, a community approximately twelve miles north of Coutts.

Applicant proposes to export a maximum of 120,000 Mcf of gas annually. Gas will be sold and delivered at the international boundary at a rate of 37.0 cents per Mcf from the date of initial delivery to December 31, 1967, 39.0 cents per Mcf from January 1, 1968, to December 31, 1969, and 41.0 cents per Mcf from January 1, 1970, to December 31, 1972, and thereafter until changed by agreement of the parties. Volumes are measured at a pressure base of 14.9 psia.

The maximum volume of gas proposed to be exported is approximately 0.26 percent of Applicant's system requirements in 1964 and is approximately 0.43 percent of the gas which Applicant is presently importing from Canada. The rates at which the gas will be sold are comparable to those at which gas is sold to the domestic market. Hence, it appears that Applicant's proposal is not inconsistent with the public interest.

Concurrently with the subject application Applicant filed in Docket No. CP66–103 an application pursuant to Executive Order No. 10485 for a permit authorizing the construction and operation of facilities at the international boundary in order to sell and deliver the gas proposed to be exported. A permit is being released concurrently herewith.

Applicant will export, sell and deliver natural gas for resale and delivery in Coutts and Milk River in lieu of Treasure State Pipe Line Company (Treasure State) which is presently authorized to export natural gas for use in those communities. Treasure State was authorized to transport natural gas to the international boundary in Docket No. G–1984, to export natural gas in Docket Nos. G–1982 and G–2147, and to construct and operate facilities at the international boundary in Docket No. G–1983 as modified in Docket No. G–2148. Due to depletion of reserves of its sole supplier, Hardrock Oil Company, Treasure State has filed applications in Docket Nos. CP66–99, CP66–100 and CP66–101 to cease its exportation of natural gas, to abandon the transportation and facilities in the United States and to surrender its permit. An order is being issued in Docket Nos. CP66–99, CP66–100 and CP66–101 concurrently herewith, *infra*, p. 96.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

The Commission finds:

The exportation of natural gas by Applicant, The Montana Power Company, as hereinabove described and as more fully set forth in the application in Docket No. CP66–102, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be on the terms and conditions hereinafter set forth:

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate upon termination or expiration of the contracts between Applicant and the gas purchasers attached as exhibits to the subject application.

(d) Applicant shall not, during the term of the authorization granted by this order, materially change or alter its export operations without first obtaining permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination date of the contracts described in (c) above, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The authorization granted herein is conditioned upon the receipt by the gas purchasers of any necessary authorizations to import gas into Canada.

(g) The annual volume of natural gas exported and sold by Applicant shall not exceed 120,000 Mcf at 14.9 psia.

The Commission orders:

(A) Authorization is granted to Applicant to export natural gas from the United States to Canada, as hereinabove described and as more fully set forth in the application in Docket No. CP66-102, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations thereunder.

(B) The authorization granted herein is conditioned upon the gas purchasers' obtaining any authorizations issued by Canada or any political subdivision thereof for the importation of natural gas.

(C) The annual volume of natural gas exported and sold by Applicant shall not exceed 120,000 Mcf at 14.9 psia.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TREASURE STATE PIPE LINE COMPANY, DOCKET NOS. CP66-99, CP66-100 AND CP66-101

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND SERVICE, TERMINATING CERTIFICATE, TERMINATING AUTHORIZATION TO EXPORT NATURAL GAS, AND REVOKING PRESIDENTIAL PERMIT

(Issued January 18, 1966)

On October 8, 1965, Treasure State Pipe Line Company (Applicant) filed in Docket No. CP66-99 an application to terminate its authorization to export natural gas from the United States to Canada heretofore issued in Docket Nos. G-1982 and G-2147 pursuant to Section 3 of the Natural Gas Act, all as more fully set forth in the application. Concurrently with the application in Docket No. CP66-99 Applicant filed in Docket No. CP66-100 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the facilities and the transportation of natural gas in the United States heretofore authorized in Docket No. G-1984; and in Docket No. CP66-101 Applicant filed an application to surrender its Presidential Permit issued in

Docket No. G–1983, as modified in Docket No. G–2148, pursuant to Executive Order No. 8202 authorizing the facilities at the international boundary, all as more fully set forth in the applications.

Applicant is authorized to transport natural gas from the Cut Bank Field in Glacier and Toole Counties, Montana, to a point on the international boundary between the United States and Canada near Sweetgrass, Montana, and sells and delivers gas at said point to Coutts Gas Company, Limited, of Coutts, Alberta, Canada, for resale and distribution in Coutts and for reale to Milk River Gas Company, Limited, for resale and distribution in Milk River, Alberta, Canada. The total volume of gas authorized to be exported is 120,000 Mcf per year.

Applicant's export authorization provides that Applicant shall reduce or terminate its sales and deliveries to Coutts Gas Company, Limited, to the extent necessary to meet Applicant's domestic market requirements. Applicant has been advised by its parent corporation, Hardrock Oil Company, its sole source of supply, that reserves have become depleted to the extent that sufficient quantities of natural gas cannot be delivered to Applicant for export. Accordingly, Applicant has filed the subject applications.

On October 8, 1965, The Montana Power Company filed in Docket No. CP66–102 an application pursuant to Section 3 of the Natural Gas Act for an order authorizing the exportation of natural gas and in Docket No. CP66–103 an application pursuant to Executive Order No. 10485 for a permit authorizing the construction and operation of facilities at the international boundary in order to sell and deliver gas to Border Utilities, Ltd., and Milk River Gas Company, Limited, for resale and distribution in Coutts and Milk River, Alberta, Canada, respectively. An order is being issued and a permit released concurrently herewith.

After due notice no petition to intervene, notice of intervention or protest to the granting of the applications has been received.

At a hearing held on January 13, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Treasure State Pipe Line Company, a Montana corporation having its principal place of business in Great Falls, Montana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 19, 1952, in Docket No. G–1984 (11 FPC 1450).

(2) The facilities and service proposed to be abandoned as hereinbefore described, all as more fully described in the application in Docket No. CP66–100, are subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the authorization issued to Applicant in Docket Nos. G–1982 and G–2147 to export natural gas from the United States to Canada should be terminated as requested in the application in Docket No. CP66–99.

(5) It is necessary and appropriate in properly conducting the foreign

relations of the United States and within the intent of Executive Order No. 10485 that the Presidential Permit issued to Applicant in Docket No. G–1983, as modified in Docket No. G–2148, should be revoked as requested in the application in Docket No. CP66–101.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the service and facilities hereinbefore described, all as more fully described in the application in Docket No. CP66–100, are granted; and the certificate of public convenience and necessity heretofore issued in Docket No. G–1984 is terminated.

(B) Applicant shall advise the Commission of the date of the abandonment authorized in paragraph (A) above within ten days thereof.

(C) The authorization heretofore issued to Applicant in Docket Nos. G–1982 and G–2147 to export natural gas from the United States to Canada is terminated as requested in the application in Docket No. CP66–99.

(D) The Presidential Permit heretofore issued to Applicant in Docket No. G–1983, as modified in Docket No. G–2148, is revoked as requested in the application in Docket No. CP66–101.

(E) The abandonment, termination and revocation in paragraphs (A), (C) and (D) above shall be effective as of the date on which The Montana Power Company commences the exportation of natural gas authorized in Docket No. CP66–102 through the facilities permitted in Docket No. CP66–103.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL.

ORDER GRANTING MOTION FOR STAY OF PROCEEDINGS ON PIPELINE PRODUCTION ISSUE

(Issued January 19, 1966)

Staff Counsel filed a motion addressed to the Commission, on December 30, 1965, seeking severance of the pipeline production issue presently consolidated in the Hugoton-Anadarko Area Rate Proceeding therefrom, initiation of a separate new proceeding, prehearing conference, phased hearings and an immediate stay of all hearings and other procedural steps respecting that issue pending Commission action upon said motion. The Municipal Gas Group[1] filed a motion on January 7, 1966 requesting a continuance of any further proceedings in such consolidated dockets relating to the pipeline production issue pending decision on Staff's motion. The Texas Independent Producers & Royalty Owners Association (TIPRO) joined in Staff's motion on January 7, 1966.

The Cities Service Companies[2] filed, on January 6, 1966, a request to extend by one week the 10 day period prescribed by Section 1.12(c) of the Rules of Practice and Procedure for submittal of answers thereto. The Pipeline Production Group[3] joined in this request on January 10, 1966. Superior Oil

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[1] Consisting of the American Public Gas Association, the Cities of Chicago and Denver and the Memphis Light, Gas and Water Division.

[2] Cities Service Company, Cities Service Oil Company, Columbian Fuel Corporation, Coltexo Corporation and Hydrocarbon Production Company, Inc.

[3] Consisting of 13 pipeline companies.

Company filed, on January 12, 1966, a request for a two week extension of time to reply to Staff's motion. By notice issued January 14, 1966, the Commission granted these requests and extended the time for filing such answers to January 24, 1966.

Hearings have been proceeding on an expedited basis on the independent producer aspects of the Hugoton-Anadarko Area Rate case but have not yet begun on the pipeline production aspects presently consolidated therein. However, at a scheduling conference held on January 5 the Examiner fixed January 31, 1966 as the date for the commencement of continuous cross-examination of pipeline production witnesses. Furthermore, cost evidence upon both the independent production and pipeline producer aspects of the consolidated proceeding involved in Docket No. AR64–1, *et al.* is scheduled to be served on February 15, 1966. Since answers to Staff's motion will only be filed on January 24, 1966 it is manifestly impossible for the Commission to consider and decide the issues thereby presented by January 31, 1966 or shortly thereafter. Accordingly, a stay of all presently scheduled hearings and other procedural steps relating to the pipeline production issue pending our final action upon this motion would obviate the danger of wasted funds, time and effort by all concerned. In these circumstances, we will grant the requested stay.

The Commission orders:

Presiding Examiner Kane shall stay and postpone all hearings and other procedural steps, including the submission of evidence and cross-examination, respecting the pipeline production issue now consolidated in the Hugoton-Anadarko Area Rate Proceeding in Docket No. AR64–1, *et al.*, pending final Commission action upon Staff Counsel's motion for severance and related relief submitted on December 30, 1965.

OPINION NO. 485

THE CINCINNATI GAS & ELECTRIC COMPANY, DOCKET NO. E–7125; THE UNION LIGHT, HEAT AND POWER COMPANY, DOCKET NO. E–7203

OPINION AND ORDER DETERMINING JURISDICTION AND DENYING ORAL ARGUMENT

(Issued January 19, 1966)*

Syllabus

1. Where a utility which is part of an electrically integrated interstate power network makes sales for resale from the network, Commission jurisdiction attaches. P. 101.
2. In an integrated power network it is not necessary to show by tracing techniques that specific units of interstate energy reach each wholesale customer where interstate power can, and at times does, permeate the company's transmission system lines leading to wholesale purchasers. PP. 101; 116, *et seq.*
3. Whether or not sales are made through local distribution facilities does not exempt them under Section 201(b) of the Power Act. PP. 101; 120.

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* Initial decision appears on p. 104. See order modifying Opinion No. 485 and denying rehearing issued March 8, 1966, 35 FPC 365. Affirmed, *The Cincinnati Gas & Electric Co.* v. *F.P.C.* 376 F. 2d 506 (CA6–1967); cert. denied, 389 U.S. 842 (1967).

4. Even if nature of facilities were relevant, record shows that facilities here are not solely used in local distribution. PP. 101; 120.
5. Commission *finds* that wholesale rates at issue are from an integrated, interstate electric system, are pool sales and are sales of electric energy in interstate commerce within meaning of Section 201 of the Federal Power Act. P. 102.
6. In a proceeding under Section 201 of the Federal Power Act, Commission *determines* jurisdiction and denies motion for oral argument.

Commissioner O'Connor *concurring in result only.*

Walter E. Beckjord, *Douglas M. Mansfield*, and *Edward H. Laylin* for The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company.

Ernst Liebman for the Staff of the Federal Power Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

Ross, *Commissioner:*

This is a proceeding to determine whether ten wholesale sales made by The Cincinnati Gas & Electric Company (CG&E) in Ohio, and one wholesale sale made by its subsidiary, The Union Light, Heat and Power Company (Union) in Kentucky, are subject to this Commission's jurisdiction under Section 201(b) of the Federal Power Act. The proceeding was instituted by an order directing CG&E to show cause why the Commission should not determine that certain of its sales at wholesale are subject to Sections 205 and 206 of the Act. A hearing was held and Presiding Examiner Harry C. Shriver issued an initial decision on October 6, 1965. The matter is now before us on exceptions filed by the Respondents.

In his decision, the examiner held that under pertinent Commission and court decisions the sales at issue are in interstate commerce under Section 201, and are not within the exemption of Section 201(b), and therefore are subject to our jurisdiction under the Act.

The basic findings of fact and the conclusions of law in the comprehensive initial decision of the hearing examiner are fully supported by the evidence of record and nothing in Respondents' exceptions calls for any modification thereof, except as noted herein.[1]

We agree with the examiner that the sales by CG&E and Union at issue in this case are subject to our jurisdiction under the Act and that the companies must file with the Commission appropriate rate schedules for them. Since we shall adopt the examiner's detailed decision, only a brief discussion of Respondents' exceptions is needed to dispose of this case.

The examiner correctly held that this case is governed by our decisions in *Indiana & Michigan Electric Company*, Docket No. E-7089, Opinion No. 458 and accompanying order issued April 14, 1965, 33 FPC 739, and in *Arkansas Power & Light Company*, Docket No. E-7090, Opinion No. 473 and accompanying order issued September 7, 1965, 34 FPC 747. Moreover, the situation here cannot be distinguished from that presented in the recent case involving Public Service Company of Indiana, Inc.[2] the facilities of which are interconnected with those of CG&E. Though there are necessarily factual differences among the cases, the rationale underlying the decisions is evident—where a utility which is part of an electrically integrated interstate power network makes sales for resale from the network, Commission jurisidiction attaches. The evidence presented by the Staff in this case as in the others referred to above, demonstrates why, as a matter of systems engineering, this is necessarily the case with respect to CG&E.

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[1] Respondents state that the examiner misapprehended their position with regard to wholesale sales to West Harrison and the defense of Butler County Rural Electric Coop., Inc. We note here that Respondents have not conceded the Commission's jurisdiction as to the applicability of the local distribution exemption to West Harrison's facilities or to deliveries to Butler County in Indiana. We agree with Respondents that these minor changes, however, will not affect the examiner's conclusions.

[2] *Public Service Company of Indiana, Inc.*, Docket No. E-7163, Opinion No. 483 and accompanying order issued December 22, 1965, 34 FPC 1513.

The main objection advanced by CG&E in its exceptions is that Staff failed to trace the flow of units of energy from out-of-state sources of generation to their actual delivery for particular loads, and that such tracing is requisite to a finding of jurisdiction. We pointed out in our *Indiana & Michigan*, *Arkansas Power*, and *Public Service Company of Indiana, Inc.* opinions that in an integrated power network it is not necessary to show by tracing techniques that specific units of interstate energy reach each wholesale customer where interstate power can and at times does permeate the company's transmission system lines leading to the wholesale purchasers. The evidence summarized by the examiner shows that such is the case here. Furthermore, we agree with the examiner's finding that the evidence shows that CG&E, Union and West Harrison form an integrated and coordinated interstate electric system. Accordingly, we find no merit in this objection of CG&E.

In their exceptions CG&E and Union also argue that their lines leading to the points of delivery for the eleven sales in issue are "facilities used in local distribution" within the meaning of the exemption in Section 201(b) and so, along with the sales made thereby, are exempt from our jurisdiction by this provision. Whether or not the facilities used to make the sales are used in local distribution, however, does not exempt the sales. This very contention was considered by the Commission in the *Indiana & Michigan Electric Co.* opinion and was rejected.[3] Even if the matter were relevant, the record shows that the CG&E facilities involved in the sales in question are not solely used in local distribution, and hence the sales would not be exempt under Section 201(b).

From the above discussion, it is evident that no useful purpose would be served by oral argument in this case and CG&E's and Union's motion therefore will be denied.

We have considered with care the exemptions to the examiner's decision not discussed herein, but have concluded that they are without substantial support in fact or reasonable basis in law, or are immaterial to decision in this case, and should therefore be denied. With the modifications described hereinabove, the presiding examiner's decision should be adopted herewith, as our decision in this case, effective as of the date of issuance of this opinion.

The Commission further finds:

(1) The Cincinnati Gas & Electric Company (CG&E) is a corporation organized and existing under the laws of the State of Ohio with its principal business office at Cincinnati, Ohio. The Union Light, Heat and Power Company (Union), a subsidiary of CG&E, is a corporation organized and existing under the laws of the State of Kentucky. West Harrison, a wholly-owned subsidiary of CG&E, is a corporation organized and existing under the laws of the State of Indiana.

(2) CG&E and Union own and operate facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted among the States of Ohio, Kentucky, and Indiana and consumed outside the state in which it is generated. Such facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution, facilities only for the transmission of electric energy in intrastate commerce,

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[3] See pp. 747, 748, *Indiana & Michigan Electric Co., supra.*

and facilities for the transmission of electric energy consumed wholly by the transmitter.

(3) CG&E, Union and West Harrison are public utilities within the meaning of that term as used in the Federal Power Act.

(4) CG&E and Union, the latter constituting in effect a part of CG&E's system, are located in the midst of a large power pool and operate their facilities as part of an integrated, interstate electric network. CG&E receives on its system energy from this multi-state power network. As a result, the wholesale sales at issue are sales from an integrated, interstate electric system, are pool sales, and are sales of electric energy in interstate commerce within the meaning of Section 201 of the Federal Power Act.

(5) CG&E, entirely or through its subsidiary Union, sells electric energy to the eleven customers referred to hereinabove and each such sale is a sale at wholesale in interstate commerce within the meaning of Sections 201, 205, and 206 of the Federal Power Act.

(6) CG&E filed, under protest, rate schedules for service to certain wholesale customers consisting of the Villages of Bethel, Blanchester, Georgetown, Hamersville, and Ripley, in Ohio and CG&E's subsidiary, West Harrison, and CG&E should maintain these on file for service to such customers, as we have heretofore provided and may hereafter provide.

(7) To the extent that CG&E and Union have not filed rate schedules for service to their other wholesale customers in this case, consisting of the City of Hamilton, Ohio; Inter-County Rural Electric Cooperative, Inc. and Butler Rural Electric Cooperative, Inc., in Ohio; The Dayton Power and Light Company in Ohio; and the City of Willliamstown, Kentucky, they have been and are continuing to violate the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations promulgated thereunder.

The Commission orders:

(A) CG&E shall maintain on file, in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, the rate schedules on file with the Commission as of this date, referred to above, as its rate schedules for its sales at wholesale of electric energy to such customers. Such rate schedules shall remain effective until superseded by a change filed pursuant to Section 205(a) of the Act and Section 35.3 of the Regulations thereunder or until changed pursuant to order of this Commission.

(B) Within 30 days after this order becomes the final act of the Commission, CG&E and Union shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, their contracts with each of their wholesale customers referred to hereinabove with respect to which they have not filed rate schedules, as their rate schedules for the sales at wholesale of electric energy to such customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3 of the Regulations thereunder, or changed pursuant to order of this Commission.

(C) The decision of the presiding examiner, to the extent not inconsistent herewith, is adopted as the decision of the Commission.

(D) Exceptions not granted herein are denied.

(E) CG&E's and Union's motion for oral argument is denied.

(F) Except to the extent set forth above, this proceeding is terminated.

Commissioner O'Connor *concurring in the result only.*

O'CONNOR, *Commissioner, concurring in result only:*

This jurisdictional proceeding is the fourth in a series which commenced with ***Indiana & Michigan Electric Company***, Docket No. E-7089, Opinion No. 458

(issued April 14, 1965). We there determined that "* * * where a public utility participates in and is dependent upon an integrated interstate power pool, all of its sales for resale are subject to the jurisdiction of this Commission." That there were limits upon this evidentiary presumption was made clear by our determination in *Arkansas Power & Light Company*, Docket No. E-7090, Opinion No. 473 (issued September 7, 1965), that "There may be situations where a public utility which is part of an integrated interstate power system can show that some of its wholesale sales are isolated from the interstate network, and, as such, are not in interstate commerce." Neither opinion purported to define exactly what operating circumstances would constitute an "integrated interstate power pool," so reference must be had to the facts of company operations in those decisions.

The term "power pool" is oftentimes used rather loosely to describe any group of companies which may be interconnected, but this label is misleading. The mere fact that utilities are interconnected does not mean they have achieved the economies of scale or the reliability of service afforded by a fully integrated power system or pool. It is my opinion, under present circumstances of electric company pooling operations, that the integrated power pool should mean no more than a pool which is designed, planned, and operated as a unit so that each part will fully reflect the duty which might be imposed upon it as a part of the overall system. In *Indiana & Michigan* and *Arkansas P&L* we were confronted with such a grid, and it could reasonably be concluded that each wholesale was dependent upon the interstate pool. That is not the situation now before us, for CG&E is not a member of an integrated power pool with supply operations in more states than one. Although it conducts operations in two other states, its entire generating capacity is located in a single state so that the widespread distribution to its electric loads is supplied largely from power generated within Ohio.

As today's majority determined in *Public Service Company of Indiana, Inc.*, Docket No. E-7163, Opinion No. 483 (issued December 22, 1965), neither integration into an interstate system nor dependence on out-of-state power supply is necessary to assuming all wholesales should be jurisdictional. Thus, by the majority's view, the remote possibility that at some time, presumably when the company might lose all its generating capacity, out-of-state power might be able to reach all loads. In *PSCI* they proceeded to determine that such a possibility is nevertheless sufficient to attach federal regulatory standards, even though such unlimited jurisdictional bias supplanted five decades of state regulation. I did not concur in that determination (see my concurring and dissenting statement 34 FPC 1513 at p. 1522), nor do I concur in the majority rationale today.

The manner of operation of CG&E and its affiliates does not raise the serious policy questions presented in *PSCI*. There we were confronted with operations concerning but one state, whereas CG&E, through its affiliates and by its affiliates, operates in three states. It thus raises problems of the feasibility of state commission regulation where costs might be freely transferred between the companies. The sole issue in this proceeding, therefore, is whether there is a reasonable certainty that out-of-state energy reaches each sale for resale which would be embraced within a single regulatory standard.

As to the sales by Union in Kentucky, power generated in Ohio must necessarily be present. Similarly, the sale to West Harrison in Indiana involves out-of-state power. The determination is not so facile for the nine sales for resale in Ohio. Certainly it cannot be presumed power received at the interconnections across state lines permeates the entirety of the CG&E system. On the record before us, however, there was a comprehensive engineering and tracing study presented by the Staff which establishes that, for our purposes, out-of-state energy reaches each point of resale. Although the majority places no reliance on this evidence, Staff's meter studies indicate substations in the immediate vicinity of the resale loads receive out-of-state power. These meter studies do not provide the measure of proof utilized in *City of Colton* v. *Southern California Edison Co.*, 26 FPC 223 (1961), aff'd. 376 U.S. 205 (1964), but we are not required to determine each point of wholesale on the basis of such comprehensive evidence. It was there determined that less demanding evidence would suffice, at least in the absence of proof of effective isolation by virtue of intervening loads and points of supply. Furthermore, for a company geographically situated as CG&E is, it is doubtful the company could make the necessary showing even with careful studies of bus-bar transfers. In this respect it should be noted that tracing is possible within the approach utilized by Staff in this proceeding. Therefore, I concur in the order today that CG&E be considered to negotiate all of its sales for resale in interstate commerce, and that it file such rate schedules with the Commission.

One further point deserves mention. In its brief on exceptions CG&E makes the telling point that, if ever a sale is considered as involving facilities for "local distribution," it is the sale made to West Harrison. It is an anomaly to determine jurisdiction over this one sale. The small voltages involved and the limited transmission lines utilized would not suffice under the Act to render CG&E a public utility. See *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515 (1945). However, while the facilities are non-jurisdictional for status determination, they are jurisdictional for rate purposes. Were precedent not compelling that "local distribution" is a limited exception and that in this proceeding it would be difficult to make the exception because of overriding difficulties with regard to filling the gap left by *P.U.C.* v. *Attleboro Steam and Electric Co.*, 273 U.S. 83 (1927), it would be necessary to register a dissent as to this sale. This conclusion is made the more compelling by our letter-order of May 27, 1965, excusing Home Light & Power of Colorado from any federal regulation. As there determined, size of transmission lines can and should play an important role in this Commission's regulatory efforts, for certainly there are limits to centralized control of matters requiring continuing review.

INITIAL DECISION
OF THE PRESIDING EXAMINER DETERMINING JURISDICTION UPON AN ORDER TO SHOW CAUSE

(Issued October 6, 1965)

SHRIVER, *Presiding Examiner*. This is a proceeding under Section 201 of the Federal Power Act to determine whether certain wholesale sales made by the Concinnati Gas & Electric Company (Cincinnati) and its corporate affiliate, The Union Light. Heat and Power Company, (Union), to their customers in Ohio and in Kentucky involve the transmission of electric energy from one state to another and accordingly are subject to the jurisdiction of the Commission. Cincinnati receives some out-of-state energy, Union has no generation of its own.

On September 4, 1963, 30 FPC 641, the Commission issued an order against Cincinnati to show cause why the Commission should not find and determine that certain sales to seven of Cincinnati's customers are sales at wholesale in interstate commerce subject to Sections 205 and 206 of the Act and Part 35 of the Commission's Regulations thereunder.[1] The Commission's order instituted an investigation into the lawfulness of certain rate schedules of Cincinnati, ordered that Cincinnati file rate schedules for service to the seven purchasers, file cost and revenue data showing its costs of rendering service to each of the seven customers for the test period beginning July 1, 1962 and ending June 30, 1963,[2] and ordered a hearing at a time to be specified by further order.

In its answer of April 24, 1964, Cincinnati, among other things, denied that the Commission has jurisdiction over the sales to the seven customers named in the Commission's order of September 4, 1963, within the meaning of Section 201(b) of the Act and denied that it operates in the States of Indiana and Kentucky. Cincinnati claimed that it is and has been generating within the State of Ohio far more electric energy than has been necessary to meet the requirements of the seven customers, that it has been delivering energy to each of said customers solely within the State of Ohio and that each of the sales is made only by means of facilities used in local distribution.

On January 27, 1965, 33 FPC 109, however, the Commission issued a further order terminating the rate investigation of Cincinnati and consolidated Docket No. E-7125 with Docket No. E-7203 involving the wholesale for resale sales by The Union Light, Heat and Power Company to Williamstown, Kentucky, (FPC Rate Schedule No. 6). By this order, the Commission also accepted a settlement proposal made by Cincinnati on January 18, 1965, whereby it would reduce its wholesale electric rates and charges to its corporate affiliate, Union, by approximately $670,000 annually commencing December 1, 1964, and would reduce its wholesale rates and charges to the five municipally-owned electric distribution systems operating within the State of Ohio (Bethel, Blanchester, Georgetown, Hamersville, and Ripley), and another corporate affiliate, West Harrison Gas and Electric Company (West Harrison), in the event these wholesale sales are determined to be within the regulatory jurisdiction of the Commission, Sections 205 and 206 of the Federal Power Act, such reductions to be in an estimated aggregate amount of $80,560 annually and to be retroactive to December 1, 1964. The Commission's order in addition provided that the rate schedules accompanying Cincinnati's settlement relative to each customer or affiliate named above were accepted for filing and that they would become effective December 1, 1964, but only in the event they were finally determined to be jurisdictional, and if so determined, Cincinnati shall refund to such customers any charges collected in excess of amounts payable under the rate schedules accepted for filing[3] if applied for on and after December 1, 1964, together with simple interest at 6⅛ percent per annum. The order of January 27, 1965, further provided for a hearing and that (1) Cincinnati shall show cause why the

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[1] The order refers to seven purchasers for which Cincinnati had not submitted rate schedules for filing with the Commission. The purchasers consisted of five municipalities, one cooperatively-owned utility, and one investor-owned utility, namely: The City of Hamilton, Ohio; Village of Blanchester, Ohio; Village of Georgetown, Ohio; Village of Hamersville, Ohio; Village of Ripley, Ohio; Inter-County Rural Cooperative, Inc.; and The Dayton Power and Light Company.

[2] By an order dated December 6, 1963, 30 FPC 1427, the Commission amended its order of September 4, 1963 changing the test period to the calendar year 1963 and requiring that Cincinnati answer in writing on or before April 15, 1964. By a Commission notice issued on April 11, 1964 the time for answering was extended until April 24, 1964.

[3] Rate schedule designation and other party:
FPC No. 22, Village of Bethel, Ohio;
FPC No. 23, Village of Blanchester, Ohio;
FPC No. 24, Village of Georgetown, Ohio;
FPC No. 25, Village of Hamersville, Ohio;
FPC No. 26, Village of Ripley, Ohio; and
Supplement No. 2 to FPC No. 15, West Harrison Gas & Electric Co.

Commission should not find and determine that the sales at wholesale for resale by Cincinnati to the five municipals, to its affiliate, West Harrison, to the City of Hamilton, Ohio, to Dayton Power and Light Company (Dayton), and to the Inter-County Rural Cooperative, Inc., (Inter-County) are sales of electric energy at wholesale for resale in interstate commerce, subject to the provisions of Sections 201, 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder, and (2) Union shall show cause why the Commission should not make a similar finding in respect to its wholesale sales for resale to Williamstown, Kentucky. At the hearings, Cincinnati raised the question of the Commission's jurisdiction over Cincinnati's wholesale sales to the Butler County Rural Electric Cooperative, Inc.

Hearings were held in the case on May 4-7, 10-14 and on June 8, 1965. An Oral Argument was had before the Examiner on July 8, 1965.

The Staff contends that the sales of electric energy by Cincinnati and by Union to their wholesale customers named herein constitute wholesale sales for resale in interstate commerce within the meaning of Section 201(b) of the Federal Power Act.[4] The Respondents, Cincinnati and Union contend that these sales do not involve the actual delivery of out-of-state energy in interstate commerce to their customers, and that even if they did such sales are made from local distribution facilities and are thus exempt from the Commission's rate jurisdiction under Section 201(b). The only issues in the case are (1) whether there is in fact a delivery of out-of-state energy in interstate commerce for resale to the Respondents' customers, and (2) whether the Respondents' facilities are used in local distribution and therefore exempt under Section 201(b).

At the outset, it is admitted that both Cincinnati and Union are public utilities within the meaning of the Federal Power Act. 17 FPC 669; 25 FPC 1195; T. 243. Neither Union nor West Harrison, Cincinnati's subsidiaries, own or operate any generating facilities. They are total requirements customers of Cincinnati. It is conceded that the Commission has jurisdiction over Cincinnati's sale of electric energy at wholesale to Union and to West Harrison. Both are out-of-state as to Cincinnati. There is also no dispute that out-of-state energy is delivered by Union to Williamstown, Kentucky, and to the Butler County Rural Electric Cooperative, Inc. T. 6, 8, 9, 11.

The Cincinnati Gas & Electric Company is a corporation organized under the laws of Ohio with its principal place of business in the City of Cincinnati. The Union Light, Heat and Power Company is a subsidiary of Cincinnati. It is incorporated under the laws of Kentucky and maintains its principal place of business in Covington, Kentucky.

Cincinnati and its subsidiaries, Union, and West Harrison, operate in contiguous territory in Southwestern Ohio, Northern Kentucky and Eastern Indiana. They are managed by the same officers. Cincinnati's service territory covers approximately 2,158 square miles and an estimated population of about 1,261,000. Union's service area covers about 475 square miles and an estimated population of about 234,000, while West Harrison's service area is limited to a small community on the Indiana-Ohio boundary. The area served by the Cincinnati system is rather heavily populated and highly industrialized.

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[4] Section 201(b) of the Act reads as follows: *The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce,* but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. *The Commission* shall have jurisdiction over all facilities for such transmission or sale of electric energy, but *shall not have jurisdiction,* except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or *over facilities used in local distribution* or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter. [Emphasis supplied.]

The parent company, Cincinnati, owns and operates three electric generating stations: namely, the Miami Fort Station, the West End Station and the W. C. Beckjord Station. These stations are interconnected by transmission lines through Ohio and Kentucky. The lines in Kentucky are owned by Union. The three stations have a total of 17 generating units with a combined nameplate rating of 1,498,950 kw, and in 1963 generated a net of 6,430,589,000 kwh. These generating stations, interconnection points and load centers are joined by a transmission network consisting of some 322 miles of 132 kv transmission line, 408 miles of 66 kv transmission line and 471 miles of 33 kv line. Cincinnati also leases 40 miles of 132 kv transmission line in Kentucky and Indiana from the Miami Power Corporation and 35 miles of 66 kv transmission line in Kentucky from Union. Cincinnati also has an agreement for the joint use with Union for the use of 25 miles of 132 kv transmission line and 8 miles of 66 kv transmission line in Kentucky. Aside from the lines either leased or used jointly with Cincinnati, Union owns 41 miles of 66 kv transmission line and 60 miles of 33 kv transmission line.

The Cincinnati system is connected with eight other companies at ten interconnection points.* Cincinnati's 132 kv interconnections include circuits to the Ohio Power Company at Portsmouth, to the Indiana & Michigan Electric Company, at Muncie, to The Dayton Power and Light Company, to the Ohio Valley Electric Company, and the Public Service Company of Indiana, Inc. The 132 kv line leased from The Miami Power Corporation provides an interconnection with The Louisville Gas and Electric Company and the Indiana-Kentucky Electric Corporation. The 132 kv, the 66 kv, and the 33 kv transmission networks are interconnected at various substations.

The major transmission networks of these eight companies with which Cincinnati is interconnected in turn are interconnected with other utilities, which constitute the American Electric Power System. Ex. 54, T. 114, 115. This system of which the Indiana & Michigan Electric Company and the Ohio Power Company are members, covers an area extending over seven states and is interconnected with 19 power systems at 66 locations. *Indiana & Michigan Electric Company*, Docket No. E-7089, Opinion No. 458, April 14, 1965, 33 FPC 739, at p. 744.

Cincinnati's interconnections with other utilities are not simply for emergency or stand-by purposes. The interconnections with the Louisville Gas and Electric Company and with the Public Service Company of Indiana were originally constructed with a view to supplying energy to these companies by Cincinnati. Other lines were constructed for the interchange or sale of energy with the Indiana & Michigan Electric Company and the Ohio Valley Electric Corporation. Large amounts of energy are transmitted between the Cincinnati system and its neighboring utilities over Cincinnati's high voltage lines. In 1963, Cincinnati (according to records kept for billing purposes), received about 709,511,000 kwh from six different companies and delivered 935,552,000 kwh to these companies. Ex. 26. During the same year, it delivered 718,656,000 kwh to its affiliate, Union, and 2,896,000 kwh to West Harrison, another affiliate. In 1963, the total energy received by Cincinnati at all points of connection was equal to 11 percent of its total net generation, and the total energy delivered to the Cincinnati system directly from out-of-state sources equaled 9 percent of Cincinnati's generation. The transfer of electric energy at Cincinnati's points of connection with other electric systems varies from moment to moment and hour to hour throughout the year. The network with which Cincinnati is interconnected operates in synchronism (at the same frequency).

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* See in this connection in passing Ex. No. 53, reproduced in Appendix A hereto.

The sale or transfer of energy between the Cincinnati system and the companies with which it is interconnected is made pursuant to agreements. These agreements are either bi-party or three-party in character and generally cover one or more services such as the sale of firm capacity, short term power, economy energy, emergency services, sharing of reserve capacity, sharing of diversity capacity energy, and the purchase of surplus power.

Aside from the foregoing agreements, Cincinnati also has agreements with The Dayton Power and Light Company, and the Columbus and Southern Ohio Electric Company. They are styled as basic transmission and basic generating agreements. They are dated as of October 1, 1964, but may not come into full force and effect until in the future. The agreements contemplate, among other things, a power pooling arrangement between the three companies. These arrangements are described in Cincinnati's Annual Report of 1963 in part as follows:

> The Company, along with The Dayton Power and Light Company, and Columbus and Southern Ohio Electric Company, has announced the formation of a Central and Southwestern Ohio power pool. The agreement provides that future generating units will be owned and operated by the three companies together.
>
> The first generating unit to be constructed will be a 400,000 kilowatt unit at the Company's Walter C. Beckjord Station, scheduled to go into service June 1, 1968. . . The unit will be held in undivided ownership by the three companies with Cincinnati owning 37½%.
>
> So that each company may receive its portion of power from the new unit, some additional transmission lines have been constructed and rights-of-way are being acquired for other transmission lines on which construction will begin in 1964.
>
> The major advantages to the Company include: (1) a reduction in required reserve generating capacity, resulting in considerable capital saving; (2) lower construction costs per kilowatt of capacity due to the larger size units; and (3) increased efficiency of the larger units resulting in lower operating costs per kilowatt-hour of output.

Cincinnati's system (including Union and W. Harrison) is connected with its nine wholesale customers at various delivery points on its 66 kv or 33 kv network. The Village of Ripley, however, is connected with a 13.2 kv transmission line. The service to each is covered by a separate agreement. Cincinnati sells energy to the City of Hamilton, the Village of Blanchester, Village of Georgetown, Village of Hamersville, Village of Ripley, Village of Bethel, Inter-County Electric Cooperative, Inc. and the Butler Rural Electric Cooperative, Inc. Union sells to the City of Williamstown.

At the hearing four witnesses testified for the Staff[5] and two for the Respondents.[6]

The Staff's first witness testified briefly as to Cincinnati's relationship with its subsidiaries. He stated that Cincinnati and its subsidiaries use the same system of accounts, that the parent company prepares consolidated financial statements, and files consolidated Federal income tax returns. The Staff's second witness described Cincinnati's system operations with relation to the other utility companies with which it is interconnected, and to its subsidiaries and wholesale customers particularly in reference to the generating stations, substations, and transmission lines and loops as evidenced by various maps, diagrams, charts, log sheets, and agreements.

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[5] They were Messrs. Bruce M. Hurt, Robert E. Cackowski, Harold E. Miller and Dr. Joseph J. A. Jessel.

[6] Mr. Howard W. Grate and Dr. Herbert H. Woodson.

The witness Miller testified that Cincinnati's Miami Fort Station receives energy from its six generating units, and from the Louisville Gas and Electric Company, the Indiana-Kentucky Electric Corporation, and the Public Service Company of Indiana, Inc.; that energy is supplied from the Miami Fort Station to points of interconnection with other utilities and to other points on the Cincinnati system, that is, over one 132 kv circuit to the Public Service Company of Indiana, Inc., over two 132 kv circuits to Port Union substation, over two 132 kv and two 66 kv circuits to the Terminal substation, and over two 66 kv circuits to the Front Street substation. He stated that in 1963, Cincinnati received 86,000 kwh from the Public Service Company of Indiana, Inc., and delivered 334,360,000 kwh to this company. He also testified that energy is supplied from Miami Fort to the Port Union substation, the Terminal substation, the Front Street substation, and to other substations, and that energy from both inside and outside the State of Ohio is commingled and supplied to all of these substations. He indicated that Port Union also receives energy generated in Ohio and generated outside of Ohio from Beckjord; that the Terminal substation receives energy generated outside of Ohio from Beckjord; that the Trenton substation receives energy from the Indiana & Michigan Electric Company, and from the Ohio Power Company; that the Hamilton substation receives energy from the Public Service Company of Indiana, Inc.; that the Trenton substation receives energy generated in Indiana and some from West Virginia; and that the Hamilton substation receives some out-of-state energy.

Mr. Miller testified that he had made a study of the reports required to be filed with the Commission by the utility companies with which Cincinnati is interconnected and had made a field study of Cincinnati's system including relevant charts, diagrams, logs and operating data.

He testified further that the City of Hamilton, the Butler Rural Electric Cooperative, Inc. (both in Ohio) and the West Harrison Gas & Electric Company (Indiana) receive out-of-state energy. His testimony revealed that energy originating from out-of-state permeates Cincinnati's high voltage lines at various busses and at times is commingled, and by means of the stations, substations, network and circuits is delivered to its customers in Ohio. On cross-examination, Mr. Miller amplified his direct testimony and explained how by means of metering, circuits, connections, and the nature of electrical phenomena energy gets from source to load. He also disclosed on cross-examination that as a means of determining whether out-of-state energy reached Cincinnati's wholesale for resale customers he relied in part upon the law of conservation of energy and the hydraulic analogy.

Dr. Jessel testified at some length as to the characteristics of Cincinnati's electric system, its sources of power supply, voltage of transmission lines, location of substations, interconnections with other electric systems, and how Cincinnati operates in relation to its customers and neighboring utilities. He stated he had examined numerous company reports, forms, and agreements executed between Cincinnati and other utilities, and prepared exhibits relative to the sources and distribution of the Cincinnati system of energy. He testified that Cincinnati is interconnected with the Ohio Valley Electric Corporation including its subsidiary, Indiana-Kentucky Electric Corporation, the Louisville Gas and Electric Company, American Electric Power System including Indiana & Michigan Electric Company and the Ohio Power Company, The Dayton Power and Light Company, the East Kentucky Rural Electric Cooperative Corporation, and stated that there is a free flow in power and energy throughout the network formed by this group of systems. He stated that he studied the maps of the

Cincinnati, and the Union electrical system and substations, 22 kv and above, transmission system maps, wiring diagrams, power flow diagrams, maps showing the interconnected electric system and annual reports to stockholders of Cincinnati and other companies.

Dr. Jessel testified that Cincinnati and its subsidiary companies are all operated as a single system within the States of Ohio, Kentucky and Indiana. He stated that during the year 1963, Cincinnati both received or delivered electric energy to the Public Service Company of Indiana, Inc., operating in Indiana; Indiana & Michigan Electric Company operating in Indiana and Michigan as part of the American Electric Power System operating in Tennessee, Virginia, West Virginia, Kentucky, Ohio, Indiana and Michigan; Indiana-Kentucky Electric Corporation operating in Indiana; Ohio Valley Electric Corporation operating in Ohio and Kentucky; The Dayton Power and Light Company operating in Ohio; City of Hamilton Municipal System operating in Ohio; that the East Kentucky Rural Electric Cooperative Corporation operating in Kentucky supplied energy to the Union Light, Heat and Power Company which in turn received practically all of its power and energy from Cincinnati. He stated that Cincinnati had billing transactions with these companies as well as with the Louisville Gas and Electric Company and the Tennessee Valley Authority.

Staff witness Jessel testified that it was his opinion, based on a reasonable engineering and scientific certainty, that out-of-state electric energy entering the Cincinnati Gas & Electric Company system in Ohio from other electric systems was delivered to The Dayton Power and Light Company, the City of Hamilton and the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley and to the Butler Rural Electric Cooperative, Inc., and the Inter-County Rural Electric Cooperative, Inc. He was also of the opinion based on a reasonable engineering and scientific certainty that electric power and energy supplied to the City of Williamstown, Kentucky, and the Union Light, Heat and Power Company by Cincinnati included electric energy and power transmitted into Kentucky from outside the State of Kentucky, and that the electric power and energy received in Indiana by the West Harrison Gas & Electric Company from Cincinnati included power and energy from states other than Indiana.

The witness stated that his opinion was supported, among other things, by his inspection of Cincinnati's system and operating records, by exhibits that he had prepared, and by the following factors:

(1) That Cincinnati operates a three-state interconnected electric system consisting of electric lines and facilities operating at 132 kv, 66 kv, 33 kv and lower voltages; the 132 kv and 66 kv electric lines and facilities of Cincinnati have relatively large capacities and they are the means by which the major transfers of electric power and energy are effected throughout the Cincinnati system, and the three-phase Cincinnati interconnected electric system is so designed, constructed and located that its electric loads can be supplied adequately regardless of the sources and combinations of power supply;

(2) That Cincinnati's system is interconnected with and continuously operates in synchronism with the electric system of the Public Service Company of Indiana, Inc. operating in Indiana, Louisville Gas and Electric Company operating in Kentucky, Ohio Valley Electric Corporation operating in Ohio and Kentucky, Indiana-Kentucky Electric Corporation operating in Indiana, Indiana & Michigan Electric Company and Ohio Power Company operating as part of the AEP System in Indiana, Michigan, Ohio, Kentucky, West Virginia, Virginia and Tennessee and The Dayton Power and Light Company operating in Ohio; these systems with which Cincinnati is interconnected are in turn connected to many other electric systems; the Cincinnati system along with the electric systems of the above-named companies constitute an interconnected electric network

throughout which there is a free flow of electric power and energy; and all of these systems are part of the Interconnected Systems Group, sharing the benefits thereof including a maintenance of a high standard of frequency, a minimum of time error, and automatic assistance from the entire Interconnected Systems Group at times of emergency;

(3) That electric energy is generated as needed because it can not be stored in electric form; it is delivered at a speed of about 186,000 miles per second; it is automatically delivered upon the addition of an electric load; it cannot be supplied to one connected load and denied to another connected load; it is delivered by each phase of a three-phase system in the form of 120 positive power pulsations or 120 positive power pulsations plus 120 negative power pulsations in a 60 cycle per second system; and the power pulsations of individual loads and individual generating sources do not coincide at all times; that electric energy is delivered only when there is electric load or when energy is being stored in some other form;

(4) That all generating units connected to a common electrical network are coupled electromagnetically and their outputs are delivered to such network which acts as a single unit from which all the electric loads are supplied; all generating units operating in synchronism have mechanical energy or rotation stored in their spinning components, which is automatically converted to electric energy when there is a decrease in frequency; conversely there is a conversion of electric energy to mechanical energy when there is an increase in frequency; all generating units do not have the same amount of spinning mass and consequently do not respond equally to an accelerating force caused by a moment to moment difference between power supply and electric load including losses, as reflected by a change in frequency; and the amount of energy converted from mechanical to electrical form at each generating unit upon a decrease in frequency is porportional to the rotating mass and the difference between the squares of the initial and subsequent frequencies;

(5) There is an automatic transfer of electric loads among generating units of Cincinnati and other systems in response to continually occurring changes in frequency because of non-uniform response attributable to unequal rotating masses at generating units; there is an automatic transfer of electric loads among parts of an electric system and among electric systems because of the addition of load at one location or on one system and the simultaneous reduction of the load at another location or on another system; there is an automatic transfer of electric loads among generating units of Cincinnati and other systems when the power pulsations of the loads and the generators do not correspond exactly; there is transfer of loads among generating units of Cincinnati because of the changes in loading schedules by the dispatchers on the operating generating units; there is a transfer of electric power and energy among Cincinnati and other electric systems because of the free flow characteristics of electric network; there is a transfer of electric power and energy among Cincinnati and other electric systems because of scheduled transactions between Cincinnati and other connected electric systems and because of scheduled transactions between such other systems which are connected to Cincinnati; and the transmission lines and facilities constituting such networks are so located and designed as to make possible such free flow operations in the interest of: maintenance of high continuity of service and frequency, automatic assistance during emergencies, and realizations of benefits of connected operations;

(6) The electric system of Cincinnati is situated in a large power pool; Cincinnati regularly takes part in power and energy transactions with other electric systems in accordance with the provisions of existing agreements.

Dr. Jessel buttressed his opinion with a detailed description of the nature of electric utility systems. He testified further that:

(a) The electric loads of electric systems varied from moment to moment as does the total generation; that electric systems such as Cincinnati's and others have no control over the actual transfers of electric power and energy over any particular transmission interconnection with another electric system if there is more than one interconnection. Similarly, utilities have no control over the actual transfers of electric power and energy with any particular electric system if there are interconnections with two or more electric systems. In each instance, this is due to the free flow characteristics of the electric network. However, all systems operating together on an interconnected basis schedule the amounts of power and energy transactions among themselves on an hour to hour basis and each sets on its own net interchange controller the net amount of scheduled transactions. Each system measures the actual transfers at each point of connection with another electric system and the difference between scheduled transactions and actual transfers are balanced out as soon as practical. In order that the method may work efficiently all interconnected systems must and do share in adhering to schedules as close as possible.

(b) An electric utility system, such as Cincinnati, is essentially an electromechanical system to which all operating generators on the interconnected network are interlocked electromagnetically. This means that electric generators, under ordinary operating conditions, run either at exactly the same speed or at a speed ratio such as 1800 or 3600 revolutions per minute for a frequency of 60 cycles. No operating generator can change its speed by itself as long as it operates connected to the network. All generators connected to the same network must follow each other as to speed and frequency whenever there is a change in frequency, and the frequency of all interlocked generators is always exactly the same.

(c) An electric system such as that of Cincinnati and others automatically requires at constant frequency that at every moment total generation always be equal to total load plus losses; otherwise, there is an unbalance causing a change in frequency. An electric system cannot supply one connected load and not supply another connected load. For any particular loading on an electric system, all of the electric energy produced by all of the generating units is delivered to the common transmission network which acts as a single unit from which all of the customers are supplied. For any change in a load or generation, there is an electrical effect through a change in voltage and current at all generators and at all loads.

(d) All generating units are coupled electromagnetically to the prime movers which drive the rotors of the generators. As the power output of a generator is increased, there is an angular displacement between a point on the stator and a point on the rotor which initially are opposite to each other electrically at no generation. As the power output on a generator is increased, this angular displacement increases until a spread between these two points of 90 electrical degrees is reached. Further loading on a generator would cause a break in the electromagnetic link between the generator and the electric network, and result in a condition called an out-of-step condition. During actual operations this angular displacement may be limited to about 40 electrical degrees because of the swings on the rotors caused by load changes and disturbances on the networks. For each moment to moment change in electric load on an electric system, there is a change in frequency and a change in the angular displacement among the rotors of the genera-

> tors; and, this causes a swapping of loads among the generators for each change in load.
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> (e) Each generating unit when operating at a speed corresponding to 60 cycles has mechanical energy of rotation stored in its rotating components, which is automatically convertible to electric energy when there is a decrease in frequency and corresponding drop in revolutions per minute. Thus, when a load is added suddenly to an electric system or a generator is taken suddenly out of service, every generating unit operating on the entire system of Cincinnati and connected systems almost instantly experiences a loss in speed, so that the mechanical energy of rotation of every generator is converted to electric energy. The sum total of the electric energy so obtained through conversion from mechanical energy of rotation, supplies part of the new load or takes the place of some of the lost generation. The amount of assistance from this rotational energy source depends on the mass of the rotating equipment and the difference between the squares of the speeds for the condition just prior to and just after the change in frequency. This conversion of mechanical energy of rotation has a stabilizing effect such that the frequency is relatively small. If there were not energy of rotation in the generators and other equipment, and if a relatively large power unbalance were suddenly to take place, the drop in frequency would be large and the electric systems could fall apart electrically before any action could be taken to restore the balance.

On cross-examination Dr. Jessel was examined freely, fully, and indeed on the nature of electrical phenomena. He strongly maintained that Cincinnati's municipal customers receive out-of-state energy. We now turn to the testimony of the Respondents.

The first witness for the Respondents, Dr. Herbert H. Woodson, testified that he had made a one day inspection trip of the facilities of Cincinnati where he observed the "Power Supervisor's Office, five substations of Cincinnati, the Pierce substation of Ohio Valley Electric Corporation, and part of the system of the West Harrison Gas & Electric Company." He prefaced his conclusions by a statement on the nature of scientific fact. He stated that "A scientific fact is knowledge about a physical phenomenon. This knowledge must be obtained from experimentally-verified scientific theory * * * . Without experimental verification, the theories and conclusions drawn from it (a scientific theory) are purely conjectural and not scientific facts * * *. With respect to electricity, a scientific fact is knowledge of electromagnetic phenomenon involving both a theory and experimental verification of the theory."

In particular reference to Cincinnati he stated that:

> * * * in a power system such as the CG&E (Cincinnati) system, all generators operate at the same frequency. As a result energy from one source is indistinguishable from energy from any other source—that is all measurable properties of energy supplied from each source is exactly the same * * *.
>
> In the more complex arrangement of a modern power system, such as the CG&E system (Cincinnati), where there are several generators, supplies of energy from out-of-state, and many loads, it is not often possible to determine as a scientific fact which generator, generators or out-of-state source or sources supply a particular load. This is true because it is not often possible to describe circumstances in which the experiment of changing the power supplied by a particular source in a prescribed way will yield a unique variation in the power consumed by a particular load every time the experiment is performed * * *.
>
> When several sources are supplying a large number of relatively small loads through a complex transmission and distribution system, the experi-

> ment of changing the output power of a particular generating unit or of opening a particular transmission line will be inconclusive with respect to attempting to determine which source or sources supply a particular load. The results of such an experiment will be a function of the electrical characteristics of the system and of the operating conditions at the time of the experiment. Thus, because the experiment will not yield the same change in load power every time it is performed, I conclude that there is no unique relation, based on scientific principles and experiments, between the power fed into the system by a particular source and the power drawn from the system by a particular load. Therefore, it is my opinion that, under such conditions, scientific principles and experiments are incapable of determining uniquely the source or sources of energy consumed by a particular load.

The witness was asked in his direct testimony whether under certain assumptions, including among others, that electric energy generated, transmitted and distributed by Cincinnati is carried by current alternating at approximately 60 cycles per second, that the electric energy generated by Cincinnati at its generators within the State of Ohio at all times exceed the aggregate quantity of energy delivered by Cincinnati to its wholesale customers involved in this proceeding, and in view of the existing Cincinnati electrical facilities with interconnections with other utility companies—whether it is possible to determine that energy transmitted from another state is delivered by Cincinnati to its wholesale municipal customers named in this proceeding, and the witness stated, "It is my opinion, based on scientific grounds and on the assumptions you have stated that it is not possible to determine that energy transmitted from another state is delivered by CG&E (Cincinnati) to any of the wholesale customers named." He stated further that, "As I have testified, the circumstances in which it is possible to establish as a scientific fact that a particular generator is a source of energy for a particular load are limited."

The witness also testified on direct examination that in his opinion Staff Witness Miller's testimony did not state "a scientific or engineering theory that has experimental verification." Similarily, he stated that, "It is my opinion that his conclusions (Staff Witness Jessel's opinions) are not based on relevant scientific facts."

On cross-examination, however, Dr. Woodson stated that he did not examine any substation records. He admitted that he had not considered in giving his opinion any records of energy transferred at the interconnection points between the Cincinnati system and other systems; nor had he considered the actual output of the generating stations on the Cincinnati system; nor the actual records of reported transfers from electric systems in Ohio among themselves and with other systems located outside the State of Ohio; nor did he inspect any hourly operating records of the Cincinnati system (except Exhibits 8 and 9 prepared by Dr. Jessel). He stated that he made no attempt to find out where any of the 1,300,497,000 kwh, metered in 1963 (Exhibit 26, part B) into the Cincinnati system from interconnecting systems went after it entered the Cincinnati system. He stated that although he had disagreed with the conclusions expressed in Dr. Jessel's direct testimony it was not completely clear to him exactly on what Dr. Jessel based his conclusions. He did admit, however, that he considered actual energy flow information as recorded on the hourly records of Cincinnati to be information of "scientific and engineering fact."

The crux of Dr. Woodson's opinion, as amplified on cross-examination is that there is no scientific way by which one can determine that energy from out-of-state sources is reaching any one of the wholesale customers involved in this proceeding with the exception of Williamstown, Kentucky and West Harrison, Indiana. Accordingly, Staff's basis for determination of delivery, in Dr. Woodson's view, is unscientific and incorrect.

Dr. Woodson appears, however, to have made but scant study of Cincinnati's records and system operations in reaching his opinion. He did admit that energy coming across the Ohio state border into the Cincinnati system was used together with energy generated by Cincinnati to fulfill its system requirements. He also admitted the converse of his main conclusion. He testified that "one can't say as a scientific fact that it does not go." (Out-of-state energy does not go to the municipalities.)

Electric energy is not matter. It is formless, colorless and cannot be seen. As the Respondents assert, out-of-state energy cannot be differentiated from intrastate energy through the senses. Electric energy is manifested in its capacity to perform work. The experts cannot fully describe it or explain how it can be used without resort to material analogies. At times they speak of the flow of energy, at others they say it does not flow. Some experts say there is no such thing as commingling of electric energy, that this term is applicable to liquids and fungible substances, and yet they admit in effect that there is a commingling but that there is no satisfactory term of description. The inherent nature of electric energy makes it difficult to identify, *i.e.*, energy utilized at one place but eminating from several sources. It is generally agreed that there is no way of identifying specific units of electrical energy from numerous sources, transmitted over a common line, at numerous loads. But this is not our concern in the instant case. Here the Respondents admit that out-of-state energy is received in Cincinnati's system but say that it is not delivered to its municipal customers. Here the Respondents claim on the one hand that there must be actual delivery to sustain jurisdiction, and on the other (because of the nature of electric energy) that delivery cannot be proven, and certainly not by experimentation. What the distinction is between actual delivery and delivery we are not told by the Respondents. The statute makes no such distinction.

But it has been suggested by way of answer to the Respondents' contentions that there are some facts of electrical phenomena which are universally accepted based on knowledge other than experimentation, and further for example that if an electric load receives energy through a line or at a point from five equal sources (excluding losses) the load must receive energy from each source. Similarily, in the same illustration if five equal loads are substituted for the one that it cannot be denied that each load receives energy from each source.

The principal issue in this case is: whether there is a delivery of energy in interstate commerce to the Respondents' municipal customers. The Respondents in effect ignore the import of the Staff's testimony but argue that it does not mean what it says. Even though the Staff Witnesses Miller and Jessel testified that there was a delivery of out-of-state energy to Cincinnati's system and that Cincinnati's municipal customers receive such energy, the Respondents argue that the method or methods utilized by them in reaching their conclusions involved in fact the law of conservation of energy and are therefore invalid. But the facts in the case which were brought to bear by the Staff Witnesses in support of their opinions are so conclusive that they cannot be ignored. In contrast, the Respondents' only witness in opposition gave but meager consideration to the specific facts in the case, made no attempt to find out what became of the energy which he admitted entered the Cincinnati system from out-of-state, or whether there was in fact a delivery or non-delivery of such energy to Cincinnati's municipal customers.

As already indicated the Respondents' chief witness based his conclusion on the general premise that the delivery of particular sources of electric energy to load can not be proven experimentally, but at the same time admitted that out-of-state energy might be delivered to the Respondents' municipal customers. Based on the evidence of record there is only one inference that can be drawn from the testimony of the Staff Witnesses in respect to the delivery of out-of-state energy here, namely, that energy from out-of-state was in fact delivered in interstate commerce to the Respondents' municipal customers, and we so hold.

The Respondents argue in effect that each kilowatt hour must be traced from each generator across state lines to the customer to establish jurisdiction. The Respondents say their position is sustained by the courts. But we do not construe the court decisions as being so restrictive. Neither *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1943) nor *Connecticut Light and Power Co.* v. *Federal Power Commission*, 324 U.S. 515 (1945) referred to by the Respondents specifically dealt with the delivery of electric energy in interstate commerce.

In *Pennsylvania Water & Power Company* v. *Federal Power Commission*, 343 U.S. 414 (1952) it was contended that some of Penn Water's sales at wholesale were to Pennsylvania customers—about 83 percent of Pennsylvania generated power. It appeared that Penn Water and the Safe Harbor Water Power Corporation had hydroelectric plants on the Susquehanna River in Pennsylvania, and the Consolidated Gas Electric Light and Power Company operated large steam plants in Baltimore. The three companies operated "under contracts for the coordinated sale and distribution of electric power in Maryland and Pennsylvania." The production and distribution of power produced by the three companies was completely integrated and pooled so that during periods of high flow in the river Consolidated received hydro energy which was more cheaply produced, while in times of low flow Penn Water received steam generated energy from Baltimore. In support of its holding of jurisdiction over the interstate sales, the Supreme Court quoted the Commission (p. 420):

> The central fact disclosed by the record about Penn Water's sales in Pennsylvania is that they are not sales of the output of Penn Water's own plant, but sales of output of the integrated and coordinated interstate electric system of which Penn Water's facilities are an integral part * * *
>
> In this manner energy crossing the State boundary, with other system energy, is used to fulfill system requirements. There result times when system energy generated in Pennsylvania is used, *mixed or unmixed, in meeting system requirements in Maryland.* Similarly, there are occasions when system energy from Maryland is used, mixed or unmixed, in meeting system requirements in Pennsylvania. Energy flows in, across, and out of the system transmission network as the needs of the interconnected members develop from minute to minute and day to day.
>
> It is accordingly evident that the operations of the unified system enterprise are completely interstate in character, notwithstanding the fact that system energy transactions at some particular times may involve energy never crossing the State boundary. 8 FPC 1, 12, 15.

The Supreme Court held that the Commission had complete authority to regulate all the commingled power flow, citing *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, affirming 5 FPC 221. The Court stated, "The Commission's power does not vary with the rise and fall of the Susquehanna River."

The same result was reached in the recent case of *Federal Power Commission* v. *Southern California Edison Company*, 376 U.S. 205 (1964). In that case the Circuit Court of Appeals assumed that there was support for the Commission's finding that energy received by the Southern California Edison system from the government dams out-of-state and then transmitted by the Edison Company to its wholesale customer, the City of Colton, in California. Here too the out-of-state energy was fused into the Edison system which supplied Colton. The Supreme Court said, "We have examined the proofs. They are in sharp conflict but we hold that the engineering and scientific evidence received by the Commission on the subject from the Commission's own experts afforded substantial evidence upon which to rest the findings which trace out-of-state energy to the City of Colton." (p. 209, note 5.)

But if there is any doubt as to jurisdiction based on the evidence in the instant case under the Court decisions, which we do not intimate, there can be none under the Commission's decisions. In *Otter Tail Power Company*, 8 FPC 393, 396-397, the Commission stated:

> The company's transmission system crosses the state boundaries at 12 major crossings carrying electric energy back and forth as the lines of the system indicate * * *
>
> The generation from plants in each of the three states contributes to the requirements of the system in all three of the states. No attempt or effort is made at any time to limit generation at any plant because of state boundaries. Here, as in the Penn Water case, the facilities in the different states are operated at all times for complete integration.

Again in *Wisconsin Michigan Power Company*, 10 FPC 170, 176 in determining jurisdiction over sales for resale the Commission noted that "the generation from plants in each of the states contributes to the requirements of the system in all of the states."

In the instant case the Respondents only employee witness testified that the company was completely integrated[7] and that it was operated "as a unit without regard to state lines." Cincinnati operates in Ohio, Indiana, and Kentucky. The generating facilities of the system and customer loads are tied together by a network of transmission lines which cross state boundaries, and the system is operated as an integrated coordinated multi-state unit to provide the capacity and energy necessary to supply the loads at maximum economy without regard to state lines. In 1963 Cincinnati received some half a billion kilowatt-hours from out-of-state.[8] Admittedly, energy coming across the Ohio state boundary from neighboring states into the Cincinnati system is used together with other energy of the Cincinnati system to fulfill its system requirements. Conversely, Cincinnati in turn supplies energy to neighboring companies from its three generating stations within Ohio with which it is interconnected. Cincinnati participates in pooling operations with its neighboring companies. Except for the magnitude of operations in *Indiana & Michigan Electric Company*, Opinion

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[7] An integrated system is described in, *The Integrated Power System*, by Philip Sporn, McGraw-Hill Book Company, Inc. (N.Y.1950) where he says in part (pp. 19-20):

From a technical standpoint, what is mean by 'integration' is this: that all facilities of the system are connected physically into or gathered within the system, and that they all are made to work continuously as part of the system. The presumption is that no facility is needlessly idle; no part of the system is left hanging loose, so to speak; no part of the system is left without the resources and support of the system as a whole.

Applied to energy generation, this means the ability to develop all energy resources capable of economic exploitation and the development of all the resources to their maximum, as well as the elimination of all barriers to development such as local inability to absorb the resources. Again, it means the ability to use the largest units justified by the requirements of the system for any particular station or source, regardless of the requirements of the local area. Still further, it means the ability, as the system grows and develops, to exploit the most efficient units capable of technical projection because other units relatively recently installed but perhaps not so technically advanced can be relegated to a lesser system use. The combined or integrated effect of these is conservation on a vast scale.

[8] 709,511,000 kwh for billing purposes as shown in FPC Forms No. 1 and 12, Ex. 26.

No. 458, April 14, 1965, Cincinnati's operations are similar to those in Indiana & Michigan and as disclosed by the recital of facts herein are supported by the same engineering and economic principles. The differences between Cincinnati and Indiana & Michigan claimed by the Respondents are more apparent than real.

It is a curious fact that the insistence upon exact tracing so pressed by the Respondents as a prerequisite to the determination of jurisdiction is based upon the analogy of the flow of liquids while at the same time the Respondents argue that such tracing is impossible since it violates both the law of hydraulics and the law of conservation of energy. But it would be singularly anomalous if the States are powerless to regulate the transmission of electric energy across state lines, and that the Federal Government would also be powerless under the Federal Power Act while admittedly there is transmission but it can not be proven with nicety. Surely Congress did not intend that the reach of the Act should diminish as the reach of electric power lines and the vast interconnections of companies expanded, and the courts very properly have not so construed the Act.

The Respondents argue that "once the out-of-state and in-state energy have met at a junction, there is no means of differentiation or identifying unless it is by means of a concept". They say there is thus no delivery. But if the Respondents' argument is accepted then in-state energy is mixed or commingled with out-of-state energy and as the Supreme Court said in the Penn Water case, the Commission has jurisdiction when this occurs. Although it may be objected that commingling and fusing are mere concepts it may be answered that concepts are involved in scientific proof.

The Respondents say that the Indiana-Michigan case is not analogous to the instant case. We think that insofar as the essential principles established in that case are concerned, they are controlling here. There, as here, out-of-state energy was received by the Respondent's system and then transmitted to their wholesale customers. In the Indiana-Michigan case the Commission stated (p. 745):

> To determine jurisdiction in such circumstances, we need not know the precise nature of the flow of electric current. * * * The Power Act applies to the transmission and sale of "electric energy", which represents an attribute of electric current, and its practical effect. We know further that, whatever its physical nature, this electric energy moves from generation to load with the speed of light. Practically it cannot be stored as such, but must be generated as needed. In accordance with the practice of all modern systems in the United States, the generation occurs in the form of 60 cycle alternating current. Its voltage is increased by transformers; it is transmitted in accordance with the system's electrical characteristics, which change from minute to minute; its voltage is reduced by other transformers in various substations; and it is delivered to the system customers. In determining whether sales of electric energy generated by the system are in interstate commerce, we must consider the physical characteristics of integrated system operation as well as the administrative and contractual aspects.
>
> * * * When a new load develops at any given point it may not be possible to determine the precise energy flows involved but it is clear that the power resources of the whole interstate system and of interconnected systems are used to meet this load and all other loads. In fact, all loads must, in effect, be supplied from total generation, for it is not possible to supply one load without supplying all the other loads.

> Thus we are not dealing merely with a single flow of energy or multiple flows of energy, but an interstate pool of energy to which the generators of the system, or other interconnected systems contribute power, and from which all loads, and sometimes the loads of other systems, are supplied.

In *Arkansas Power & Light Company*, Opinion No. 473, September 7, 1965, the Commission stated (at p. 751):

> An interstate electric network is dynamic and ever changing both with respect to load and to generation source. It is an oversimplification, therefore, to talk in terms of a flow of electricity from point to point in an integrated power network of the type involved here. Instead, generation from each source in the system contributes directly or indirectly, and to an ever varying extent, to the energy present in all parts of the system which are not isolated from out-of-state energy sources.

Although the numerous contentions made by the respondents in respect to delivery have been considered, it is unnecessary to answer them in detail. It is accordingly held that Cincinnati's wholesale sales for resale here involved are subject to the Commission's jurisdiction and are governed by the Indiana-Michigan and the Arkansas Power & Light Company cases and the court cases previously cited. We turn now to the question of whether the respondent's facilities are used in local distribution so as to exempt Cincinnati's wholesale sales under Section 201(b) of the Act.

Even if the wholesale sales for resale are in interstate commerce, the Respondents contend that they are not subject to the Commission's jurisdiction because they are made from facilities used in local distribution and are thus exempt under Section 201(b) of the Act. In support of this contention, the Respondents' Witness Grate testified that "all of the facilities used in effecting the wholesales * * * are used in local distribution". (T. 182, 197.) Mr. Grate testified further that "those lines which deliver relatively large blocks of energy from one substation to another and which usually have capacities of the same order of magnitude as the transformers in their terminal substations, and which are not usually tapped, I define as transmission". (T. p. 198.) He said that as the electric loads grew it became necessary to tap and extend the lower voltage lines for distribution purposes, and that the Cincinnati system transmission voltage increased to 33 kv, then 66 kv, and then 132 kv.

On cross-examination he indicated that the entire service area of Cincinnati and it subsidiaries was a local area and that all the lines were in local distribution (T. pp. 1050-1051) and indeed that Cincinnati's "entire operation from coal pile to residential meter is engaged in the distribution of electric energy". The witness said that this concept included energy deliveries to the Ohio Valley Electric Corporation and the Dayton Power and Light Company (T. p. 1065). He admitted, however, that some of Cincinnati's higher voltage lines serve as connections with other systems, but when asked whether his company's higher voltage lines were used for transmission purposes and to transmit the electric energy to and from other electric systems, he said he "wouldn't know without tracing."

The Staff Witness Miller disagreed with the Company's witness. On rebuttal Mr. Miller defined transmission and transmission lines by quoting from the "*Glossary of Electric Utility Terms Financial and Technical 1961*" published by the Edison Electric Institute of which Cincinnati is a member.[8] Mr. Miller explained his disagreement by saying that the Company's witness limited the facilities used in effecting the wholesale sales to those in the immediate vicinity of the point of transfer of energy to the customer, whereas he should have included all the facilities from the source through the transmission system to the point of transfer. Secondly, he has characterized as facilities used in local distribution the lower transmission feeders to the point of transfer. Mr. Miller indicated that Cincinnati's facilities are not designed solely for the purpose of producing and distributing electric power to customers within its service area; that some are interconnected and operated in synchronism with neighboring companies; that the 24 mile, 132 kv steel tower line constructed in 1940, from the Trenton substation to the Indiana-Ohio line, for example, was constructed to enable Cincinnati to interchange and sell electric energy at wholesale to the Indiana & Michigan Electric Company, and that certain other facilities are used to transmit electric energy in bulk from substation to substation, rather than for distribution purposes.

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[8] Mr. Miller stated that transmission is defined as "The act or process of transporting electric energy in bulk from a source or sources of supply to other principal parts of the system or to other utility systems. Also a functional classification relating to that portion of utility plant used for the purpose of transmitting electric energy in bulk to other

Although there is a clear distinction on principal as between facilities used in transmission and in distribution, the distinction is not always clear in application. In many circumstances each shades off into the other. This is partly true in respect to Cincinnati and its system. But this is not to say that a line can not be drawn between the facilities utilized in transmission and distribution here. On the contrary, the record clearly shows that the respondents' facilities which are physically used to deliver electric energy to its wholesale for resale customers are not used solely in local distribution as contended and we so hold.

But the Commission's jurisdiction under Section 201(b) of the Act does not turn on whether the facilities used to make the wholesale sales for resale in interstate commerce are used in local distribution. Jurisdiction is not dependent on the nature of the facilities involved in effecting the sale. The nature of the facilities only applies to the determination of the status of an electric company as a "public utility" under Part II of the Act. *Wisconsin Michigan Power Company*, 10 FPC 170, 176; and *Interstate Light and Power Company*. 10 FPC 225, 230. In *Indiana & Michigan Electric Company*, Opinion No. 458, April 14, 1965, the Commission stated (at pp. 747–748):

> * * * if a company owns or operates *any* jurisdictional facilities it is a public utility despite the fact that it might also own or operate facilities exempted by Section 201(b), and *all* wholesale sales for resale in interstate commerce made by a public utility are subject to the provisions of Sections 205 and 206 of the Act regardless of whether the particular sale involved jurisdictional facilities. See *Interstate Light and Power Co.* 10 FPC 225, 230, affirmed *sub nom.* *Wisconsin* v. *F.P.C.*, 201 F. 2d 183 (CADC), certiorari denied 345 U.S. 934; *Wisconsin Michigan Power Co.*, 10 FPC 170, 176-177, affirmed by 197 F. 2d 472 (CADC) certiorari denied 345 U.S. 934.

The Respondents cite the *Colton* case and *Connecticut Light & Power Company* v. *F.P.C.*, 324 U.S. 515 (1945) as holding that the local distribution clause applies to wholesale jurisdiction. We disagree. In *Connecticut Light & Power Company* the court held that the Commission shall have jurisdiction over all facilities for the transmission of electric energy in interstate commerce and to the wholesale sales in interstate commerce, but not over the facilities in local distribution.

As to *F.P.C.* v. *Southern California Edison Co.* 376 U.S. 205 (the *Colton* case), the Respondents rely upon the first three sentences of the court's footnote 6 at

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principal parts of the systems or to other utility systems, or to expenses relating to the operation and maintenance of transmission plant". He defined transmission line as "a line used for bulk transmission of electricity between a generating or receiving point and major substations or delivery points".

page 210 in support of their contention but they disregard the remaining portion of the footnote where the court referred to the Commission's finding that, "There are facilities owned by Edison which it uses exclusively to effect the wholesale to Colton and not for local distribution." The court stated that the Commission's findings had ample support. Here, as there, there is ample support that the Respondents' facilities are not for local distribution but are used to effect its wholesale sales in interstate commerce to its several wholesale customers. After considering the cases and the entire record it must therefore be concluded that Respondents are not exempt under Section 201(b) of the Act.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, the briefs, and arguments of counsel, it is found and concluded in addition to the findings and conclusions heretofore stated that:

(1) The Cincinnati Gas & Electric Company (Cincinnati) is a company organized and existing under the laws of the State of Ohio.

(2) The Union Light, Heat and Power Company (Union) is a corporation organized and existing under the laws of the State of Kentucky. Union is a subsidiary of Cincinnati, which owns 99.8 percent of its voting securities.

(3) The West Harrison Gas and Electric Company (West Harrison) is a corporation organized and existing under the laws of the State of Indiana. West Harrison is a wholly owned subsidiary of Cincinnati.

(4) Cincinnati sells electric energy at wholesale to the City of Hamilton, Ohio; the Villages of Blanchester, Georgetown, Hamersville, Ripley, and Bethel, Ohio; Inter-County Rural Electric Cooperative, Inc., and Butler Rural Electric Cooperative, Inc., in Ohio; and the Dayton Power and Light Company in Ohio. Cincinnati also sells electric energy at wholesale to West Harrison, Indiana, and to Union in Kentucky.

(5) Union in Kentucky sells electric energy at wholesale to the City of Williamstown, Kentucky.

(6) Each of the sales to the customers named above in (4) and (5) is a sale at wholesale for resale in interstate commerce within the meaning of Sections 201, 205, and 206 of the Federal Power Act.

(7) The facilities of Cincinnati and of Union by means of which they deliver electric energy to their wholesale customers named above in (4) and (5) are used for the transmission and sale at wholesale of electric energy in interstate commerce and are not "facilities used for local distribution" within the meaning of Section 201(b) of the Federal Power Act.

(8) Each of the three companies named above in (1), (2) and (3) own and operate facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted in the States of Ohio, Indiana, and Kentucky and consumed outside of the State in which it is generated, which facilities do not include the facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of the electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Cincinnati, Union, and West Harrison are public utilities within the meaning of the Federal Power Act.

(9) The three companies named above in (1), (2), and (3) comprise the Cincinnati system which is an integrated and coordinated interstate electric system operating in the States of Ohio, Kentucky, and Indiana. The Cincinnati system is directly interconnected with the Public Service Company of Indiana, Inc., in Indiana, the Indiana & Michigan Electric Company in Indiana, the

Louisville Gas & Electric Company in Kentucky, and the Ohio Valley Electric Corporation, the Ohio Power Company, and the Dayton Power and Light Company, operating in Ohio. The Cincinnati system operates continuously in synchronism with the aforesaid companies and other electric systems in the States of Indiana, Ohio, Kentucky, Illinois, Tennessee, West Virginia, and Virginia, as well as other States.

(10) At times each of the wholesale customers named above in (4) and (5) receives out-of-state electric energy from the multi-state power network of which the Cincinnati system is a part, such energy having been commingled with the Cincinnati system energy.

(11) The integrated and coordinated Cincinnati interstate electric system and the systems with which it is interconnected and operating in synchronism form an integrated and operating power pool, and the sales of electric energy by the Cincinnati system to its wholesale customers named above in (4) and (5) are pool sales and by reason of the interstate nature of the pool are sales in interstate commerce.

(12) All of the rate schedules for sales by Cincinnati and Union to the wholesale customers referred to above in (4) and (5) have not been filed with the Federal Power Commission. Accordingly, Cincinnati and Union have been and are in violation of the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations promulgated thereunder.

(13) Cincinnati and Union will be ordered to file with the Commission their rates or charges for service to their wholesale customers referred to above in (4) and (5), including the classification, practices, and regulations affecting such rates and charges, together with the contracts which in any manner affect or relate to such rates or charges, classifications or services pursuant to the provisions of Section 205 of the Federal Power Act and the Regulations promulgated thereunder.

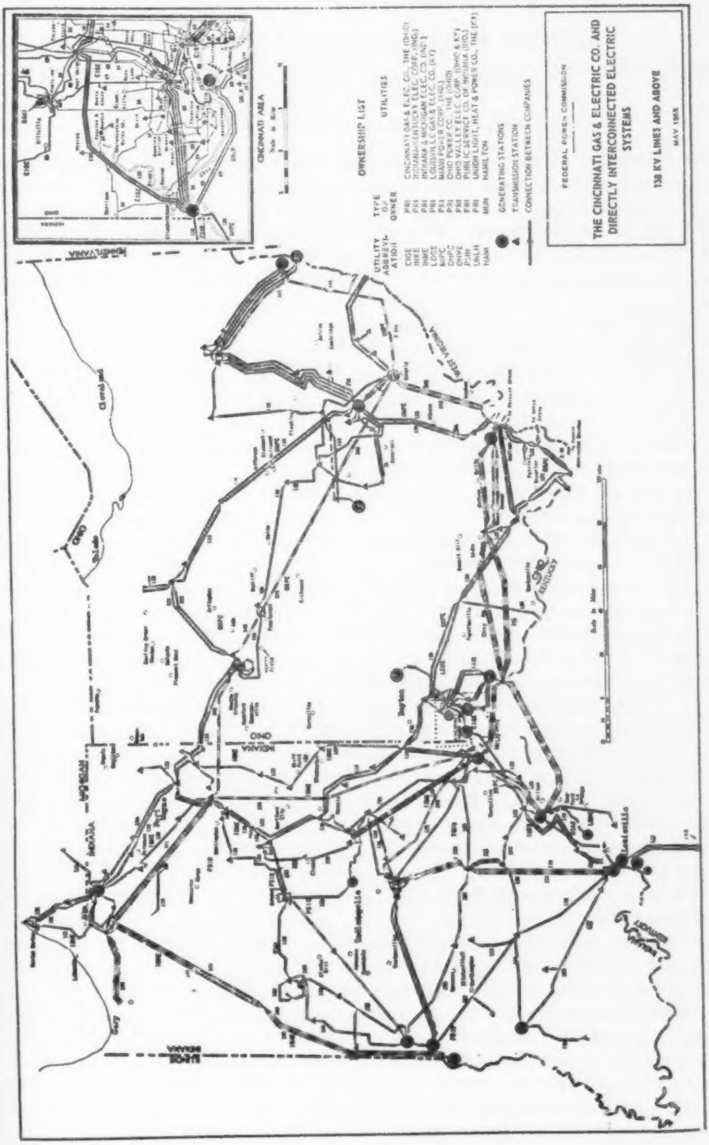
ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that:

Within thirty days after this order becomes the final act of the Commission, The Cincinnati Gas & Electric Company and The Union Light, Heat and Power Company shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, their contracts with each of their municipal, cooperative, or other customers referred to in (4) and (5) above, their rate schedules for their sales at wholesale of electric energy to those twelve customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder, or changed pursuant to order of this Commission.

HARRY C. SHRIVER,
Presiding Examiner

APPENDIX A—DOCKET NO. E-7125 ET AL., EXHIBIT NO. 53


CINCINNATI AREA
OWNERSHIP LIST
UTILITY ABBREVIATION
TYPE OF OWNER
UTILITIES
CIGE PRI CINCINNATI GAS & ELEC. CO., THE (OHIO)
INKE PRI INDIANA-KENTUCKY ELEC. CORP. (IND.)
INME PRI INDIANA & MICHIGAN ELEC. CO. (IND.)
LOGE PRI LOUISVILLE GAS & ELEC. CO. (KY)
MIPC PRI MIAMI POWER CORP. (IND.)
OHPC PRI OHIO POWER CO., THE (OHIO)
OHVE PRI OHIO VALLEY ELEC. CORP. (OHIO & KY)
PSIN PRI PUBLIC SERVICE CO. OF INDIANA (IND.)
UNLH PRI UNION LIGHT, HEAT & POWER CO., THE (KY)
HAMI MUN HAMILTON
GENERATING STATIONS
TRANSMISSION STATION
CONNECTION BETWEEN COMPANIES
FEDERAL POWER COMMISSION
THE CINCINNATI GAS & ELECTRIC CO. AND DIRECTLY INTERCONNECTED ELECTRIC SYSTEMS
138 KV LINES AND ABOVE
MAY 1965
PENNSYLVANIA
WEST VIRGINIA
KENTUCKY
OHIO
INDIANA
MICHIGAN
ILLINOIS
Cleveland
Toledo
Dayton
Louisville

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 82

ORDER DEFERRING FURTHER ACTION

(Issued January 20, 1966)*

By a separate notice issued this day we have initiated a comprehensive rulemaking proceeding looking towards the establishment of criteria for determining the net investment of a licensed hydroelectric project within the meaning of Section 3(13) of the Federal Power Act.[1] The amortization reserve for licensed projects established by Section 10(d) of the Act, which is the subject of the instant proceeding, has as its primary purpose the establishment of a fund which could serve, if necessary, as one of the several items specified in Section 3(13) by which project net investment can be reduced to the extent such items are derived from project earnings in excess of a fair return.

This proceeding was started as a test case at a time when the Commission was focusing on the amortization reserve to the exclusion of the net investment calculation of which it is a part.[2] Since net income not paid out in dividends or posted to a reserve account will usually be recorded in unappropriated surplus another deductive item under Section 3(13) there will normally be no need to call upon an amortization reserve fund unless the system of which the project is a part pays out in dividends an amount more than the fair return, or makes net appropriations from surplus to pay dividends not earned. Moreover, the amortization reserve established by Section 10(d) only comes into play after the first twenty years of project operation and can only be utilized to reduce net investment to the extent that has been derived from earnings in excess of a fair return—a calculation which is part of the Section 3(13) determination but is not required under Section 10(d) (the amortization reserve is based on a specified return which may be more or less than the fair return). Finally, it is clear that to the limited extent it might be necessary to call upon Section 10(d) to reduce project net investment this can be done at the time the ultimate Section 3(13) determination is made; the obligation to establish an amortization reserve is statutory, as well as being a part of each license, and the failure of a licensee to establish the fund on its books of accounts prior to the time the Commission makes its Section 3(13) determination can no more preclude Commission consideration of the amounts required to be in such a reserve by the terms of the license in making its Section 3(13) calculations, than the previous failure of the licensee to establish such fund could now preclude the separate retroactive establishment thereof.

In view of these various factors, we believe that the public interest would be served by deferring any further action on the Section 10(d) amortization reserve for Alabama Power Company's Project No. 82 until it can be taken in the light of the outcome of the rulemaking proceeding with respect to Section 3(13). Any loss of precedental value which might result from an early determination here is outweighed by the advantages of reaching any ultimate determination which might be warranted herein in the light of our conclusions in the Section 3(13) rulemaking docket. On the other hand, since an evidentiary record has been developed which could be of value in the event a determination of the amounts required to be in Alabama Power's amortization reserve for Project No. 82 should become necessary, we shall not terminate the proceeding.

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*See order issued March 15, 1966 re rehearing, 35 FPC 391.

[1] Notice of Proposed Rulemaking, Docket No. R-297, 31 F.R. 1079, January 27, 1966 (Editor's note).

[2] See order fixing hearing issued August 18, 1961, 26 FPC 392, and Presiding Examiner's Initial Decision issued October 8, 1963 (Editor's note).

The Commission orders:

In light of the foregoing the proceedings herein are deferred pending further action by the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

VERMONT ELECTRIC COOPERATIVE, INC. v. CENTRAL VERMONT PUBLIC SERVICE CORPORATION AND VERMONT ELECTRIC POWER COMPANY, INC., DOCKET NO. E-7205

ORDER ACCEPTING RATE SCHEDULES FOR FILING, PERMITTING WITHDRAWAL OF APPLICATION SEEKING AN INTERCONNECTION AND WHOLESALE ELECTRIC SERVICE PURSUANT TO SECTION 202(B) OF THE FEDERAL POWER ACT AND TERMINATING PROCEEDING

(Issued January 20, 1966)

Pursuant to rate schedules accepted for filing hereinafter, Vermont Electric Cooperative, Inc., Johnson, Vermont, will receive wholesale electric service for its Hinesburg, Vermont, utility service area through a 34.5 kv interconnection at Williston, Vermont. That service will supplement Cooperative's present single power source for the Hinesburg area, a 34.5 kv interconnection with Central Vermont Public Service Corporation at Underhill, Vermont.

To complete this additional service Central Vermont Public Service Corporation (Central Vermont), Rutland, Vermont, will make available up to a maximum of 2,500 kw of power and associated energy at the Essex substation of Vermont Electric Power Company, Inc. (Velco), Rutland, Vermont. Thereafter such power and energy will be wheeled over facilities of Green Mountain Power Corporation (Green Mountain), Burlington, Vermont, with delivery to Cooperative at Williston. Central Vermont, Velco and Green Mountain submitted their respective rate schedules for filing pursuant to Section 205 of the Federal Power Act, all as identified and designated in Attachment A hereto. Those schedules, submitted for filing on November 1, 1965, were accompanied by requests for waiver of the Commission's 30-day prior notice requirement to permit them to become effective as of October 28, 1965, the date of commencement of service to the Cooperative at Williston.

On February 1, 1965, Cooperative filed an application for an order of this Commission directing Central Vermont and Velco, pursuant to Section 202(b) of the Federal Power Act, to provide service to the Cooperative at the 115 kv Essex substation of Velco in the vicinity of Burlington, Vermont. Following answers thereto by Central Vermont and Velco, respectively, filed March 3, 1965, and notice of intervention filed on behalf of the Vermont Public Service Board on February 23, 1965, prehearing conferences were held, attended by representatives of interested parties and Commission staff. The proffered rate schedules were developed as a result of those conferences.

Pursuant to the proffered rate schedule filings, Central Vermont will provide the power and energy to Cooperative at Velco's Essex substation at the unit rates and charges which are applied by the State of Vermont to its allottees for power and energy received from the Power Authority of the State of New York (St. Lawrence and Niagara projects). Based upon estimates for the 12-month period beginning November 1, 1965, 2,402,789 kilowatt hours will be supplied at an average demand charge of $2.64 per kw, and an average energy charge of 2.84 mills per kilowatt hour. And since Velco (not Central Vermont) is the owner of facilities at the Essex substation, Velco will receive $75 per month for the use of its substation, transformation and switching facilities for the delivery of the initial 1,000 kw of firm power per month and an additional $37.50 per month for each 500 kw block thereafter up to the maximum of 2,500 kw per month. Velco's charges for the estimated deliveries during the 12-month period beginning November 1, 1965, would amount to 0.375 mills per kilowatt hour.

Upon receipt of the power and energy by Green Mountain at the Essex substation, the latter will transmit it to Cooperative's facilities at Williston, Vermont (Hinesburg area) at a charge of $38.50 per month. Based on the projected deliveries for the 12-month period commencing November 1, 1965, Green Mountain's average charges would be .2 mills per kilowatt hour.

Cooperative's request for permission to withdraw its application (complaint) was filed December 16, 1965, pursuant to Section 1.11 of the Commission's Rules of Practice and Procedure. On December 17, 1965, Central Vermont and Velco, respectively, advised that they had no objection to the requested withdrawal. Earlier, on October 14, 1965, the Vermont Public Service Board in anticipation of the proffered rate filings had advised that it had no objection to withdrawal of the complaint.

The Commission finds:

It is necessary and appropriate for purposes of the Federal Power Act and the Commission Regulations thereunder, and good cause has been shown to accept the proffered rate schedules of Central Vermont Public Service Corporation, Vermont Electric Power Company, Inc., and Green Mountain Power Corporation, respectively, to become effective as of October 28, 1965; to permit withdrawal of the application of Vermont Electric Cooperative, Inc., filed February 1, 1965; and to terminate this proceeding.

The Commission orders:

(A) The 30-day notice period as provided in Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations thereunder, is waived with respect to the proffered rate schedules as referred to and designated in Attachment A hereto, and they are allowed to take effect as of October 28, 1965, all as indicated in that Attachment.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective dates are concerned.

(C) Acceptance of the rate schedules as referred to in Paragraph (A) above is without prejudice to any findings or order which have been or may hereafter be made by this Commission in any proceeding by or against the filing Companies. Moreover, nothing in this order shall be construed as a waiver in any other respect of the requirements of Section 205 of the Federal Power Act or Section 35.3 of the Commission's Regulations thereunder; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, classification or any rule, regulation, contract or practice affecting such services or rates provided for in the rate schedules referred to and designated in Attachment A; nor shall this order be deemed as recognizing any claimed contractual right or obligation affecting or relating to such services or rates.

(D) Permission is granted for Vermont Electric Cooperative, Inc., to withdraw its applications filed February 1, 1965, and the above entitled proceeding is terminated.

ATTACHMENT A

Rate schedule designations and descriptions

Filing date: November 1, 1965. Effective date: October 28, 1965 (as requested)

CENTRAL VERMONT PUBLIC SERVICE CORPORATION

Rate schedule designation	Other party	Instrument	Instrument date
FPC No. 64	Vermont Electric Cooperative, Inc.	Service agreement	7-1-65
*Exhibit A to FPC No. 64.	Vermont Electric Cooperative, Inc.	Letter dated Dec. 3, 1965 from Central Vermont Public Service Corp. to Federal Power Commission and enclosures as listed therein.	12-3-65

VERMONT ELECTRIC POWER CO., INC.

Rate schedule designation	Other party	Instrument	Instrument date
FPC No. 13	Vermont Electric Cooperative, Inc.	Joint use agreement	8-25-65

GREEN MOUNTAIN POWER CORP.

Rate schedule designation	Other party	Instrument	Instrument date
FPC No. 24	Vermont Electric Cooperative, Inc.	Transmission contract	8-24-65

*No effective date required.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ST. MICHAELS UTILITIES COMMISSION, ET AL. v. EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, ET AL., DOCKET NO. E-7114, ET AL.

ORDER DENYING PETITIONS FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE

(Issued January 21, 1966)

On January 10, 1966, petitions for leave to participate in the oral argument scheduled for February 1, 1966, in the above-entitled proceeding, as *amicus curiae*, were filed with the Commission by the North Carolina Municipally-Owned Electric Systems, a voluntary association of 73 cities and towns in the State of North Carolina, and by 10 cities in the State of Florida, namely, Alachua, Bartow, Bushnell, Fort Meade, Lake Helen, Leesburg, Mount Dora, Newberry, Ocala and Williston.

Good cause has not been shown for granting the petitions for leave to participate in the oral argument in the above-entitled proceeding as *amicus curiae*.

The Commission orders:

The petitions filed by the North Carolina Municipally-Owned Electric Systems and by the 10 Florida cities mentioned above for leave to participate in the oral argument in the above-entitled proceeding on February 1, 1966, as *amicus curiae* are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER REJECTING APPEAL

(Issued January 24, 1966)*

On December 1, 1965, Hunt Oil Company and thirteen other Hunt entities filed an appeal from a ruling of the presiding examiner denying a request of Hunt that all respondents who had completed the all areas questionnaire be required to provide additional data. Such data allegedly would have permitted a separation of costs and volumes of gas produced from leases having intrastate sales in 1962. Humble Oil & Refining Company, *et al.*, Associated Gas Distributors and the staff opposed the Hunt request.

The presiding examiner found that the requested data would not be used in support of an issue material to the proceeding and denied the Hunt request.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides: "Rulings of presiding officers may not be appealed from during the course of hearings except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest." The appeal sets forth no facts which would constitute extraordinary circumstances warranting our consideration of the appeal and it should therefore be rejected.

The Commission orders:

The appeal filed by Hunt Oil Company, *et al.* on December 1, 1965, is rejected.

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*Reconsideration denied by order issued March 14, 1966, 35 FPC 128.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NOS. CP66-226, CP65-140, CP64-131; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NOS. CP64-125, CP62-219; EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-384; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-389; ASHLAND OIL & REFINING COMPANY (OPERATOR), ET AL., DOCKET NO. G-3912; SINCLAIR OIL & GAS COMPANY (OPERATOR), ET AL., DOCKET NOS. CI65-1267, CI65-1271

ORDER GRANTING MOTIONS TO CONSOLIDATE, PERMITTING INTERVENTION, PRESCRIBING PROCEDURES, AND FIXING DATE OF HEARING

(Issued January 24, 1966)

On January 17, 1966, Cities Service Gas Company (Cities), a Delaware corporation with its principal place of business at Oklahoma City, Oklahoma 73101, filed in Docket No. CP66-226 an application, pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of facilities to be used in interstate commerce for the transportation by the year 1969 of an additional 100,000 Mcf of natural gas per day from supply sources in the Kansas-Hugoton area through Cities' Hugoton-Kansas City 26-inch pipeline for the purpose of meeting increases in Cities' system gas requirements, all as hereinafter described, subject to the jurisdiction of the Commission, as more fully represented in the application in Docket No. CP66–226 which is on file with the Commission and open for public inspection.

Cities' application states that its increased purchases from producers in the Kansas-Hugoton area will be taken into its system in two stages, each at the rate of 50,000 Mcf per day, with the first increment to be received in the year 1968 and the second to be taken in 1969. The increased volumes to be purchased from the Kansas-Hugoton area are projected for use beginning two years in the future on Cities' assumption that its increased requirements for 1966 and 1967 will be satisfied primarily by the Commission's issuance of a certificate to Arkansas Louisiana Gas Company (Arkla) in Docket No. CP64–125 authorizing Arkla to sell 100,000 Mcf of gas per day to Cities with such deliveries commencing in the fall of 1966.

Cities alleges that the additional volumes of gas which it proposes to transport will be received from wells already connected to its existing facilities in the Kansas-Hugoton Field and also from wells to be drilled by the producers to develop the Panoma Council Grove Field and other deep formations which underlie a portion of the Kansas-Hugoton Field. In order to take these additional volumes of gas into its system Cities proposes to construct and operate the following facilities: (1) 6,000 horsepower of additional compression at its Hugoton Station, (2) 176.64 miles of 26-inch loop at intervals along its 26-inch pipeline extending from the Kansas-Hugoton area to Kansas City, Missouri, (3) a new 6,000 horsepower compressor station in the northern part of the Hugoton Field to be known as the North Ulysses Station, (4) a new 4,000 horsepower compressor station in the southern portion of the Hugoton Field to be known as the South Ulysses Station, (5) 2,000 horsepower of additional compression at its United Station, (6) 135,000 Mcf per day of additional dehydration capacity at its Hugoton Station, (7) 13 miles of 20-inch, 6 miles of 16-inch, and 3 miles of 6-inch additional field pipelines, and (8) about 301 four-inch well ties connecting Cities' gathering system with the new wells to be drilled in the Panoma Council Grove Field. The application states that these additional facilities will increase the capacity of Cities' Hugoton-Kansas City line from about 505,000 Mcf per day to 605,000 Mcf per day.

The total estimated cost of the proposed facilities is $25,569,000 which Cities plans to finance by the issuance of first mortgage pipeline bonds which Cities believes can be sold at an interest rate not exceeding 5⅛ percent.

On December 27, 1965, the Commission received from Chairman William L. Mitchell of the State Corporation Commission of the State of Kansas (Kansas Commission) a summary of the results of an informal conference jointly held on December 17, 1965, by the applicants and parties to the separate consolidated proceeding in Docket No. CP65–140, *et al.*,[1] and Docket No. CP64–125, *et al.*[2] According to Chairman Mitchell's report, Cities agreed at the informal confer ence to file the application in Docket No. CP66–226, hereinbefore described, in which Cities proposes to construct $25.6 million of facilities in order to take an additional 100,000 Mcf of gas per day from the Kansas-Hugoton area to help meet its system requirements commencing with the year 1969.

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[1] Hereinafter referred to as the Hugoton Field proceeding. This proceeding was initiated by the Commission's order issued August 27, 1965, in *Cities Service Gas Company, et al.*, Docket No. CP65–140, *et al.*, which consolidated for hearing the applications of: Cities in Docket No. CP65–140, El Paso Natural Gas Company (El Paso) in Docket No. CP65–384, Northern Natural Gas Company (Northern) in Docket No. CP65–389, and Sinclair Oil & Gas Company (Sinclair) in Docket Nos. CI65–1267 and CI65–1271, and the petition to amend a prior certificate filed by Ashland Oil & Refining Company (Ashland) in Docket No. G–3912.

[2] Hereinafter referred to as the Arkla proceeding. This proceeding was initiated by paragraph (E) of the order accompanying Opinion No. 472 issued August 31, 1965, in

The Kansas Commission's report also indicates that Arkla and Cities have agreed to withdraw their opposition [3] to the Kansas Commission's and El Paso's motions filed November 16, 1965, and November 18, 1965, respectively, requesting that the Hugoton Field proceeding be consolidated with the Arkla proceeding. Additionally, Arkla and Cities agreed at the informal conference not to oppose the consolidation of Cities' new application filed in Docket No. CP66–226 with the other applications involved in the Arkla and Hugoton Field proceedings. Since the interrelated nature of all of the applications hereinbefore discussed is self-evident, and since neither Arkla nor Cities nor any other party any longer opposes the Kansas Commission's and El Paso's motions to consolidate, it is unnecessary to discuss the detailed reasons given by the movants in support of their motions to consolidate.

The remainder of the Kansas Commission's report of the informal conference relates to the parties' unanimous recommendation that we adopt certain dates and procedures for the filing of testimony, for the commencement of the hearing, and for the general conduct of the hearing once it has begun. We believe that the recommended procedures will expedite the progress of the hearing on these related applications and our order will hereinafter incorporate all of the parties' procedural recommendations.

However, it will be essential to add some further procedural steps to those agreed to by the participants at the informal conference in order to provide for the receipt by the parties in the Arkla proceeding of the prepared testimony and exhibits which had already been served by the applicants in the Hugoton Field proceeding on the parties in that proceeding prior to the filing of any motions to consolidate. The instant order will allow the interveners who have heretofore been permitted to intervene in either the Arkla or the Hugoton Field proceeding to become participants in this newly consolidated proceeding. Any doubt as to identity of parties will be eliminated by the tabulation below which lists all the applicants and interveners [4] who are now considered to be participants in the consolidated proceeding provided for herein, such parties having been permitted to intervene by our orders issued in the Hugoton Field (Docket No. CP65–140, *et al.*) proceeding on August 27, 1965, and in the Arkla (Docket No. CP64–125, *et al.*) proceeding on April 29, 1964, and October 25, 1965:

Transwestern Pipeline Company, et al., Docket No. G–20464, *et al.*, 34 FPC 659, which provided for a supplemental hearing at which Arkla and any other companies who might be interested could present evidence in support of proposals "* * * designed to meet Cities' need for additional gas service." In Opinion No. 472 we also noted the interrelationship of the Hugoton Field proceeding with the Arkla proceeding and stated "* * * In the remanded hearing provided by our order, we anticipate that the parties will fully explore the possibility of supplying Cities' remaining gas requirements from this source [Kansas-Hugoton Field]" (p. 666).

[3] Arkla and Cities, on December 28, 1965, and January 4, 1966, respectively, filed "Withdrawals" of their answers, filed November 23, 1965, and November 26, 1965, respectively, in opposition to the granting of the Kansas Commission's and El Paso's motions to consolidate.

[4] On December 6, 1965, the People of the State of California and the Public Utilities Commission of the State of California filed a notice of withdrawal of their intervention in the Arkla proceeding stating that issuance of a certificate to Transwestern Pipeline Company by the order accompanying Opinion No. 472 *supra* had terminated their interest in the Arkla proceeding. This order hereinafter permits the withdrawal of these parties.

Arkansas Louisiana Gas Company
Ashland Oil & Refining Company
Cheyenne Light, Fuel and Power Company
Cities Service Gas Company
City Group Gas Defense Association
Colorado Interstate Gas Company
Colorado Springs, Colorado, City of
Colorado-Wyoming Gas Company
Denver, Colorado, City and County of
El Paso Natural Gas Company
Gas Service Company, The
Midwest Industrial and Commercial Gas Users Association and Sheffield Division, Armco Steel Corporation
Missouri Public Service Commission
Northern Natural Gas Company
Oklahoma Corporation Commission
Pacific Lighting Gas Supply Company
Pan American Petroleum Corporation
Public Service Company of Colorado
Pueblo Gas and Fuel Company, The
Sinclair Oil & Gas Company
Socony Mobil Oil Company, Inc.
Southern California Gas Company and Southern Counties Gas Company of California
Springfield, Missouri, City of, and Board of Public Utilities of Springfield, Missouri
State Corporation Commission of the State of Kansas
Texaco Inc.
Transwestern Pipeline Company
Trinidad, Colorado, City of
Union Gas System, Inc.

The Commission finds:

(1) It is in the public interest in the administration of the Natural Gas Act that the Kansas Commission's and El Paso's motions to consolidate the Arkla proceeding with the Hugoton Field proceeding be granted.

(2) The interrelated application of Cities filed in Docket No. CP66-226 should be consolidated with the other applications involved herein for expedition of the hearing thereon and for elimination of duplication of effort by the applicants, the interveners, and the Commission.

(3) It is desirable to allow the interveners heretofore permitted to intervene in either the Hugoton Field or the Arkla proceeding to become interveners in this newly consolidated proceedings, including participation in all matters related to Cities' application in Docket No. CP66-226, in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The Kansas Commission's and El Paso's motions to consolidate, filed November 16, 1965, and November 18, 1965, respectively, are granted and the applications in the Arkla proceeding (Docket No. CP64-125, *et al.*), the applications and petition to amend in the Hugoton Field proceeding (Docket No. CP65-140, *et al.*), and Cities' application in Docket No. CP66-226 are hereby consolidated for the purposes of hearing and decision thereon.

(B) The interveners who have already been permitted to intervene in either the Arkla or the Hugoton Field proceeding are hereby permitted to become interveners in this consolidated proceeding, including participation in all matters related to Cities' application in Docket No. CP66-226, subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their respective petitions to intervene or reasonably related to such asserted rights and interests in light of the broadened aspects of this proceeding; and *provided, further,* that the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Protests or petitions to intervene in this consolidated proceeding with respect to Cities' application in Docket No. CP66-226 may be filed with the Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20246, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before February 7, 1966. It shall be unnecessary for the interveners who have been permitted to intervene by paragraph (B) above to make additional filings under this paragraph in order to participate fully in this consolidated proceeding.

(D) Upon receipt of this order counsel for the applicants (Cities, El Paso, Northern, Sinclair, and Ashland) in the Hugoton Field proceeding shall serve the prepared direct testimony and exhibits heretofore served on the parties in the Hugoton Field proceeding upon all other parties to this consolidated proceeding who have been permitted to intervene by paragraph (B) above and upon any additional parties who may subsequently be permitted to intervene herein.

(E) Upon receipt of this order counsel for Cities shall serve the answering testimony and exhibits heretofore served on the parties in the Hugoton Field proceeding upon all other parties to this consolidated proceeding who have been permitted to intervene by paragraph (B) above and upon any additional parties who may subsequently be permitted to intervene herein.

(F) The applicants' and interveners' unanimous procedural recommendations for expediting this consolidated proceeding, as set forth in the Kansas Commission's report of the informal conference held December 17, 1965, are adopted as follows:

(1) The direct cases of Arkla and Cities are to be filed on or before February 7, 1966.

(2) The answering cases of the applicants and the staff are to be filed on or before February 28, 1966.

(3) The answering cases of the interveners are to be filed on or before March 7, 1966.

(4) The hearing is to commence on March 15, 1966.

(5) The order of procedure at the hearing shall be as follows:

(5)(a) Cross-examination of Arkla's direct case, to be followed by;

(5)(b) Cross-examination of the answering cases, if any, relating to Arkla's direct presentation, to be followed by;

(5)(c) Cross-examination of witnesses whose testimony relates to Cities' market requirements, to be followed by;

(5)(d) Continuation of the hearing commencing with the cross-examination of those witnesses whose testimony relates to reserves and deliverability in the Kansas Hugoton area, subject to interruption, and out of order if necessary, by; and

(5)(e) Arkla's presentation of its rebuttal case, if any, at the earliest possible date following completion of the cross-examination of Cities' witnesses relating to market requirements.

(6) At the conclusion of cross-examination of all the cases previously served, dates for the service of rebuttal testimony, if any, shall be considered.

(G) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly Sections 7, 15, and 16, and the Commission's Rules and Regulations under that Act, a public hearing shall be held, before a duly designated presiding examiner, commencing March 15, 1966, at 10:00 a.m. (EST), in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., concerning the matters involved in and the issues presented by the applications and petition to amend which have heretofore been filed with the Commission and consolidated for hearing by paragraph (A) above.

(H) Arkla's and Cities' withdrawals of their answers in opposition to the Kansas Commission's and El Paso's motions to consolidate are permitted pursuant to Section 1.11(d)(1) of the Commission's Rules of Practice and Procedure.

(I) The withdrawal of intervention herein by the People of the State of California and of the Public Utilities Commission of the State of California is hereby permitted pursuant to Section 1.11(d)(1) of the Commission's Rules of Practice and Procedure.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CRISP COUNTY POWER COMMISSION, PROJECT NO. 659

ORDER APPROVING MODIFICATION OF LICENSE AND DELETING THEREFROM EXHIBIT L DRAWINGS RELATING TO EMERGENCY SPILLWAY

(Issued January 24, 1966)

Application was filed on October 3, 1961, by Crisp County Power Commission, licensee for Project No. 659, for Commission approval of deletion from the license of Article 31 and certain Exhibit L drawings. The project is located on the Flint River in Crisp County, Georgia.

Article 31 of the license, included therein by Commission order issued January 23, 1953, 12 FPC 808, and made effective February 1, 1953, requires the licensee to commence construction of an emergency spillway and reconstruction of the spillway gates within one year from the effective date of the order and to complete such construction not later than two years from said effective date.

The licensee has modified the spillway bridge deck to allow the raising of the spillway gates an additional two and one-half feet. Following its study of the change, Commission staff has concluded that: the added capacity of the larger gate opening substantially equals that of the emergency spillway required by Article 31 of the license; the project will not cause an added hazard to life; and construction of the emergency spillway is no longer necessary.

The Commission finds:

Public notice of the application has been given. No protests or petitions to intervene have been received.

The Commission orders:

(A) Article 31 of the license for Project No. 659 is hereby deleted from the license.

(B) The following described Exhibit L drawings are hereby eliminated from the license for the project:

Exhibit L "Plan Profile, Sheet 1, Proposed Spillway Bypass" (FPC No. 659-74), and

Exhibit L "Plan Profile, Sheet 2, Proposed Spillway Bypass" (FPC No. 659-75).

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-6

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1966)

On December 6, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-6 a petition to amend the order of the Commission issued in said docket on September 24, 1965, 34 FPC 965, by requesting authorization to make additional sales and deliveries of natural gas to Intermountain Gas Company (Intermountain) for transportation to and resale and distribution in the communities of Ucon and Lewisville, Idaho, all as more fully set forth in the application to amend.

By the aforementioned order issued in Docket No. CP66-6, Applicant was authorized, inter alia, to sell and deliver natural gas to Intermountain for transportation to and resale and distribution in the communities of Rigby and Rexburg, Idaho. Applicant's sales and deliveries pursuant to the aforementioned order are made at the outlet of its existing Idaho Falls Meter Station which is situated on Applicant's 22-inch O.D. Northwest Division mainline.

Intermountain has requested from Applicant a supply of natural gas necessary for the initiation of natural gas service by Intermountain to consumers in the communities of Ucon and Lewisville, Idaho, and their respective environs. The proposed supply of natural gas will be delivered at the outlet of Applicant's Idaho Falls Meter Station.

Applicant states the communities of Ucon and Lewisville are situated to the north of Idaho Falls and adjacent to Intermountain's Idaho Falls-Rexburg lateral pipeline. Intermountain proposes to construct approximately 3,000 feet of 4-inch transmission pipeline connecting Ucon with its Idaho Falls-Rexburg lateral pipeline and approximately 2,000 feet of 4-inch transmission pipeline connecting Lewisville with such lateral, together with the necessary distribution facilities in each such community.

The application to amend states that the estimated maximum daily and annual natural gas requirements of Intermountain for the communities of Ucon and Lewisville aggregate 509 Mcf and 53,222 Mcf, respectively. No additional facilities will be required.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued September 24, 1965, in Docket No. CP66-6 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 24, 1965, in Docket No. CP66-6 is amended so as to authorize Applicant to sell and deliver an additional volume of natural gas to Intermountain Gas Company for resale and distribution in Ucon and Lewisville, Idaho, and their respective environs as more fully described hereinbefore, and in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-367; PHILLIPS PETROLEUM COMPANY (OPERATOR), ET AL., DOCKET NO. CI65-1005; SINCLAIR OIL & GAS COMPANY, DOCKET NO. CI65-1150; NORTHERN NATURAL GAS PRODUCING COMPANY, DOCKET NO. CI65-1160

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULES FOR FILING

(Issued January 24, 1966)

Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) on May 19, 1965, filed in Docket No. CP65-367 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Michigan Wisconsin proposes to construct and operate a 20-inch gas supply line extending approximately 93 miles from the existing terminus of its main transmission line at the Edgar G. Hill Compressor Station in Hansford County, Texas, to the Gageby Creek Field in Wheeler County, Texas, together with a gathering system, meter stations and dehydration facilities. Contracts for the purchase of all the natural gas reserves in the Gageby Creek Field (Texas RR District No. 10) have been executed by Michigan Wisconsin with Phillips Petroleum Company (Operator), *et al.* (Phillips) in Docket No. CI65-1005, Sinclair Oil & Gas Company (Sinclair) in Docket No. CI65-1150 and Northern Natural Gas Producing Company (Northern Natural) in Docket No. CI65-1160.

Phillips, Sinclair and Northern Natural propose a price of 17.0 cents per Mcf at 14.65 psia, subject to upward and downward Btu adjustment. The 17.0 cents rate is equal to the area rate ceiling, but the downward Btu adjustment is not a full proportional adjustment from a base of 1,000 Btu's per cubic foot, and thus is not consistent with the standard set forth in Opinion No. 464 issued June 10, 1965, 33 FPC 1228, as supplemented October 4, 1965, 34 FPC 1098 (*Texaco Inc., et al.*, Docket No. G-8087, *et al.*). The certificates issued to Phillips, Sinclair and Northern Natural shall be conditioned to require that they submit, as rate schedule supplements, agreements with Michigan Wisconsin modifying the Btu adjustment provisions of the contracts so as not to conflict with Opinion No. 464. The named producers have indicated a willingness to accept certificates so conditioned.

Michigan Wisconsin by letter filed January 4, 1966, has expressed a willingness to accept a certificate conditioned to exclude from its rate base in any subsequent rate filing, for rate making purposes, the prepayments for natural gas made to the producers, aggregating $1,700,000. The certificate issued hereinafter to Michigan Wisconsin will be so conditioned.

The estimated cost of the proposed facilities of Michigan Wisconsin is $5,740,000, which will be financed from the proceeds of bank loans after the utilization of available treasury refunds.

After due notice published in the Federal Register on May 29, 1965 (30 F.R. 7260), in Docket No. CP65-367, petitions to intervene were filed by Iowa Southern Utilities Company on June 7, 1965, and by Iowa Electric Light and Power

Company on June 14, 1965, in support of the application, and by Great Lakes Gas Transmission Company and Trans-Canada Pipe Lines Limited, both on June 21, 1965. Notices of withdrawal of interventions were filed by Trans-Canada and Great Lakes on July 29, 1965. No other petitions to intervene, notices of intervention or protests to the application have been filed.

At a hearing held on January 20, 1966, the Commission on its own motion received and made a part of the record in these proceedings all evidence including the applications filed in the respective dockets, and exhibits thereto, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicant, Phillips Petroleum Company, a Delaware corporation having its principal place of business in Bartlesville, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 26, 1963, in Docket No. G–14244 (29 FPC 581).

(3) Applicant, Sinclair Oil & Gas Company, a Maine corporation having its principal place of business in Tulsa, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 7, 1963, in Docket No. G–20297 (29 FPC 898).

(4) Applicant, Northern Natural Gas Producing Company, a Delaware corporation having its principal place of business in Denver, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of September 28, 1956, in Docket No. G–5716.

(5) The facilities hereinbefore described, as more fully described in the application in Docket No. CP65–367, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Michigan Wisconsin is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The construction and operation of the proposed facilities by Michigan Wisconsin are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Michigan Wisconsin's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(9) The sales of natural gas by Phillips, Sinclair and Northern Natural to Michigan Wisconsin hereinbefore described, and as more fully described in the applications in Docket Nos. CI65–1005, CI65–1150 and CI65–1160, respectively, will be made in interstate commerce, subject to the jurisdiction of the Commis-

sion and such sales by Phillips, Sinclair and Northern Natural, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(10) The sales of natural gas by Phillips, Sinclair and Northern Natural, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(11) Phillips, Sinclair and Northern Natural are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder

(12) Public convenience and necessity require that the certificates issued hereinafter to Phillips, Sinclair and Northern Natural and the rights granted thereunder be conditioned upon compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(13) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Michigan Wisconsin be issued a certificate in Docket No. CP65-367 conditioned to provide that it will not include the advance payments totaling $1,700,000 attributable to the Gageby Creek Field in its rate base in any subsequent rate filing, in accordance with its letter filed with the Commission on January 4, 1966.

(14) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that certificates issued herein to Phillips, Sinclair and Northern Natural be conditioned to require that they submit, as rate schedule supplements, agreements with Michigan Wisconsin modifying the Btu adjustment provisions of the contracts involved so as not to conflict with Commission Opinion No. 464; and that Northern Natural at such time as it makes its related rate schedule filing shall include therewith the supplement providing for the prepayment to it.

(15) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the related rate filings of Phillips and Sinclair be accepted for filing effective on the date of initial delivery of natural gas to Michigan Wisconsin.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Michigan Wisconsin, in Docket No. CP65-367, authorizing the construction and operation of facilities and transportation of natural gas as hereinbefore described, all as more fully described in the application and exhibits filed in Docket No. CP65-367, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are conditioned upon Michigan Wisconsin complying with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 6 months from the date of issuance of this order.

(D) Certificates of public convenience and necessity are issued to Phillips, Sinclair and Northern Natural authorizing the sales and delivery of natural gas to Michigan Wisconsin, as hereinbefore described, all as more fully described in the applications and exhibits filed in Docket Nos. CI65–1005, CI65–1150 and CI65–1160, respectively, upon the terms and conditions of this order.

(E) The certificates issued by paragraph (D) above and the rights granted thereunder are conditioned upon Phillips, Sinclair and Northern Natural's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of such Regulations.

(F) The certificates issued to Phillips, Sinclair and Northern Natural are not transferable and shall be effective only so long as Phillips, Sinclair and Northern Natural continue the acts or operations authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(G) The grant of the certificates issued in paragraph (D) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement or any sales of natural gas subject to said certificates.

(H) Michigan Wisconsin shall not include the advance payments totaling $1,700,000 attributable to the Gageby Creek Field in its rate base in any subsequent rate filing, in accordance with its letter filed with the Commission on January 4, 1966.

(I) Phillips, Sinclair and Northern Natural shall submit, as rate schedule supplements, agreements with Michigan Wisconsin modifying the Btu adjustment provisions of the contracts involved so as not to conflict with Commission Opinion No. 464; and at such time as Northern Natural makes its related rate schedule filing it shall include therewith the supplement providing for the prepayment to it.

(J) The related rate filings of Phillips and Sinclair are accepted for filing effective on the date of initial delivery of natural gas to Michigan Wisconsin, and are designated as follows:

Docket No. and filing date	Description	Designation
CI65-1005 4-12-65	Contract, 3-5-65	Phillips Petroleum Co. (Operator), *et al.* FPC Gas Rate Schedule No. 413.
	Supplemental agreement 3-5-65	Supplement No. 1.
CI65-1150 4-29-65	Contract 4-15-65	Sinclair Oil & Gas Co., FPC Gas Rate Schedule No. 340.
	Supplemental agreement 4-15-65	Supplement No. 1.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
DOCKET NO. CP66-148

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1966)

On November 12, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66-148 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional daily contract quantity of 163 Mcf of natural gas to Wilson Gas Service Company, Inc. (Wilson Gas), an existing customer of Applicant, as more fully set forth in the application.

Wilson Gas has advised Applicant by letter dated October 15, 1965, that it has elected, pursuant to Paragraph 17 of the general terms and conditions of Applicant's FPC Gas Tariff, to receive service under Applicant's Rate Schedule G-2, to be effective December 1, 1965, in lieu of continuing to receive service under Applicant's Rate Schedule CD-2; and that it requires and will contract for an additional Daily Contract Quantity of 163 Mcf of natural gas. Applicant proposes to sell and deliver the additional volumes of gas from its unallocated capacity of 30,171 Mcf of gas authorized by order issued in Docket No. CP65-404 on August 24, 1965, 34 FPC 568. Wilson Gas has an existing Daily Contract Quantity of 587 Mcf of gas. No additional facilities are required for the proposed sale and delivery and said sale and delivery will be made at an existing delivery point.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Wilson Gas, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that Applicant's service agreement with Wilson Gas dated October 22, 1965, and filed November 1, 1965, be accepted for filing effective on the date of issuance of this order, and that with respect thereto the notice requirements of Section 154.22 of the Commission's Regulations be waived.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Wilson Gas, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(C) The service authorized shall be commenced as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) The service agreement between Applicant and Wilson Gas dated October 22, 1965, and filed November 1, 1965, is accepted for filing effective on the date of issuance of this order.

(E) The notice requirements of Section 154.22 of the Commission's Regulations with respect to the service agreement filing are waived.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NEW BEDFORD GAS AND EDISON LIGHT COMPANY AND PLYMOUTH COUNTY ELECTRIC COMPANY, DOCKET NO. E-7255

ORDER AUTHORIZING SALE OF FACILITIES

(Issued January 24, 1966)

New Bedford Gas and Edison Light Company (New Bedford) and Plymouth County Electric Company (Plymouth), both subsidiaries of New England Gas and Electric Association, filed a joint application on November 18, 1965 for an order pursuant to Section 203 of the Federal Power Act authorizing Plymouth to sell and New Bedford to acquire certain electric transmission and distribution facilities.

New Bedford is a corporation organized under the laws of the State of Massachusetts qualified to do business in Massachusetts with its principal business office located in New Bedford, Massachusetts. New Bedford owns and operates a system engaged in the generation, purchase, transmission, and distribution of electric energy in Bristol and Plymouth Counties, Massachusetts and in the production, purchase and distribution of gas in its electric service area.

Plymouth is a corporation organized under the laws of the State of Massachusetts and authorized to do business in the State of Massachusetts, with its principal place of business in Cambridge, Massachusetts. Plymouth purchases electricity from New Bedford and sells it at retail in thirteen communities in Bristol, Plymouth and Barnstable Counties, Massachusetts.

Pursuant to a purchase and sale agreement, dated November 15, 1965, New Bedford has agreed to purchase and Plymouth has agreed to sell all of the properties and assets of Plymouth, including all of its powers, rights, locations, licenses, privileges and franchises owned by Plymouth on the date of closing, except any franchise to generate, transmit and sell electricity for wholesale in the Town of Sandwich, its franchise to be a corporation, and real and personal property relating to the Cape Cod Canal steam-electric plant, the first unit of which is now under construction. New Bedford has also agreed to assume all liabilities of Plymouth with the exception of an "Open Account-Canal Plant" payable to New England Gas and Electric Association.

It is anticipated that New Bedford's acquisition of Plymouth's facilities will permit it to operate on an integrated system basis for the same purposes as formerly. The merger of the facilities of the two Companies will eliminate a gap in New Bedford's transmission system, as New Bedford will acquire the Tremont-Kingston portion (approximately 16 miles) of 115 kv line, connecting New Bedford and Boston Edison Company, now owned by Plymouth. There is to be no change in the power supply. New Bedford's current residential rates are considerably lower than Plymouth's. Upon the consummation of the acquisition, New Bedford will put into effect new retail rates which will result in a reduction of $177,600, of which $129,700 will apply to customers of Plymouth.

The consideration for the property plant and equipment included in this sale amounts to $9,341,064 and represents the depreciated original cost per books of such facilities to be transferred, calculated as of January 1, 1966. The amount of $4,500,419 of the consideration is to be paid in cash, and the remainder will consist of liabilities of Plymouth which will be assumed by New Bedford. The transaction will not create acquisition adjustments on the books of New Bedford and it will not create a gain or loss on the books of Plymouth.

Written notice of the application has been given to the Massachusetts Department of Public Utilities and the Governor of that State. Notice was also published in the Federal Register on December 11, 1965 (30 F.R. 15339) stating that any person desiring to be heard or to make any protest with reference to the application, should on or before December 27, 1965 file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petitions or protests requesting to be heard in opposition to the granting of the application have been received. The Department of Public Utilities of the State of Massachusetts, in an order issued December 8, 1965, has approved the transaction described herein.

In a letter dated November 24, 1965, Middleboro Gas and Electric Department of the Town of Middleboro, a municipal utility, requested that the Commission in authorizing the instant sale require that New Bedford turn over to Middleboro 345 customers served by it in the territory of Lakeville and in return accept 37 customers served by Middleboro in the territory of Rochester. In a letter dated December 30, 1965, New Bedford states that it opposes any such conditions and points out that the entire matter was reviewed by the Massachusetts Department of Public Utilities in 1959 and again at the time of its consideration of the sale proposed herein, but that it did not impose such conditions. Middleboro's request appears to be based on a long standing controversy and is unrelated to the proposed transaction. Furthermore, it concerns an adjustment of franchise territory which is outside of the scope of Federal Power Commission jurisdiction. Accordingly, we are unable to accede to the request of the Town of Middleboro.

The Commission finds:

(1) Applicants are both corporations organized and existing under the laws of the State of Massachusetts. They own and operate facilities among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Rhode Island, Vermont and New Hampshire, and the State of Massachusetts and which is consumed at points outside the States in which it is generated, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicants, therefore, are public utilities within the meaning of that term as used in Section 201 of the Federal Power Act.

(2) By the proposed transactions, Plymouth, will dispose of all of its transmission and distribution facilities, subject to the jurisdiction of the Commission which have a value in excess of $50,000 and New Bedford in acquiring such facilities, will merge or consolidate its facilities, subject to the jurisdiction of the Commission with those of Plymouth, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities by Plymouth and the proposed acquisition of these facilities by New Bedford as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed sale by Plymouth and the proposed acquisition by New Bedford of the aforementioned transmission and distribution facilities, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) The Applicants shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-86

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1966)

On September 29, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-86 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reduction of the certificated contract demand volumes of gas for sale to Coon Rapids, Iowa, from 850 Mcf to 750 Mcf per day, as more fully set forth in the application.

Natural gas service to Coon Rapids by Applicant commenced on September 22, 1953, and the maximum volumes were increased from time to time, as indicated in the following dockets:

Docket No.	Authorized volumes	Year
G-2063	605 Mcf	1954
G-4259	705 Mcf	1955
G-14779	755 Mcf	1959
G-18756	780 Mcf	1961
CP63-219	850 Mcf	1964

In Docket No. CP64-112, Applicant was authorized to deliver an additional 50 Mcf of contract demand to Coon Rapids for the 1964-65 heating season. However, before commencement of delivery, the Commission granted Applicant's petition to rescind the increase. The reason for that reduction was that Coon Rapids contemplated the building of a peak shaving plant with a capacity of 35 Mcf per hour and would not need the increased volume. The reason for the 100 Mcf reduction hereinafter authorized is to permit Coon Rapids to more efficiently utilize its peak-shaving facilities which went into operation in the fall of 1965.

Coon Rapids proposes to meet its 1965-1966 peak day requirement of 1,100 Mcf by purchasing the 750 Mcf still authorized to be sold to it by Applicant and 350 Mcf from its peak shaving plant.

Due notice of the filing of the application was published in the Federal Register on October 10, 1965 (30 F.R. 13178). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on January 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The sales of natural gas involved in this proceeding, as hereinbefore described and as more fully described in the application in this proceeding,

are sales for resale in interstate commerce subject to the jurisdiction of the Commission and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of reduced volumes of natural gas, as proposed in the application, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Northern Natural Gas Company, authorizing the reduction in contract demand volumes of natural gas from 850 Mcf per day to 750 Mcf per day to Coon Rapids, Iowa, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The service agreement between Applicant and Coon Rapids, dated September 14, 1965, is accepted for filing to become effective as of the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP66-178

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 24, 1966)

On December 2, 1965, Transwestern Pipeline Company (Applicant) filed in Docket No. CP66-178 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and operation of natural gas facilities for the sale of natural gas to existing distributors for resale in existing market areas, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 35 new delivery points, 10 miles of lateral or loop lines of no more than 4-inches in diameter, 35 taps and 5 meters in order to sell gas for resale as stated above. Further, Applicant states that no facility will be installed and no sale will be made which does not meet the requirements set forth in Section 157.7(c) of the Commission's Regulations.

The total estimated cost of facilities proposed under this application will not exceed a maximum of $150,000 exclusive of the costs for which Applicant will be reimbursed for taps under Article 8 of Applicant's Service Agreement, Form C, which is contained in its FPC Gas Tariff. The total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

Since Applicant's Service Agreement, Form C, provides for certain reimbursements for costs of taps and valves, Applicant requests a waiver of the provisions of Section 157.7(c)(1)(i) of the Commission's Regulations which prohibit the filing of an abbreviated application when a distributor is required to make a contribution to the Applicant for cost of construction of facilities.

The cost of facilities will be financed from funds on hand or funds available from company operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.*, (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirement, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $150,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provision of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) Good cause has been shown for waiver of that portion of Section 157.7(c)(1)(i) of the Commission's Regulations under the Act which prohibits the filing of an abbreviated application where contribution toward the cost of the facilities is to be required of distributors.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Transwestern Pipeline Company, to construct during the calendar year 1966 the proposed facilities and to operate such facilities to sell natural gas to distributors for resale, as hereinbefore described, and as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $150,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued hereinabove is granted on the express condition that any interruptible service which may result from the authorization therein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) Applicant's request for waiver of that portion of Section 157.7(c)(1)(i) of the aforesaid Regulations which prohibits the filing of an application where contribution to the cost of facilities is to be required from distributors is granted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP66-235

ORDER TO SHOW CAUSE

(Issued January 25, 1966)

On November 4, 1964, Atlantic Seaboard Corporation (Seaboard), in Docket No. CP65-122, filed an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act for the construction and operation of additional facilities for the transportation and sale of natural gas.

The application was subsequently amended and consolidated with other applications in Columbia Gulf Transmission Co., *et al.*, Docket No. CP65-102, *et al.*, for a comparative hearing.

Testimony given and exhibits submitted by Seaboard employees and officers during the course of the aforesaid hearing revealed that Seaboard has been, is currently engaged in and indicates its intent to continue acts which may constitute the abandonment, construction, and operation of pipeline facilities for the transportation and sale of natural gas subject to the jurisdiction of this Commission without having obtained prior authorization of the Commission as required by the Natural Gas Act, particularly Sections 7(b) and 7(c), and the Commission's Rules and Regulations, particularly Section 157 of the Commission's Regulations.

Seaboard is a Delaware corporation having its principal place of business in Charleston, West Virginia. It operates facilities engaged in the transportation and sale of natural gas in West Virginia, Virginia and Maryland.

Seaboard's principal pipelines consist of four major facilities: a 26-inch outside diameter west-to-east looped pipeline approximately 250 miles length from United Fuel Gas Company's (United Fuel) Cobb, West Virginia Compressor Station to Dranesville, Virginia; a 20-inch single line west-to-northeast of approximately 200 miles length from United Fuel's pipeline near White Sulfur Springs, West Virginia, at the Virginia-West Virginia state line to Dranesville, Virginia; a 24-inch diameter pipeline of approximately 50 miles length, from Seaboard's Lost River Compressor Station, West Virginia, southeasterly to its Bickers, Virginia Compressor Station, said 24-inch line interconnecting the main 26-inch and 20-inch west-to-east pipelines of Seaboard; and 20-inch, 26-inch, and 30-inch pipelines of various loops and segments of approximately 85 miles length from Dranesville, Virginia to a connection with The Manufacturers Light and Heat Co. at the Maryland-Pennsylvania state line northeast of Baltimore, Maryland.

The facilities involved in the instant order are related to Seaboard's abandonment of its existing 20-inch pipeline, the construction of a new 20-inch pipeline in its place, and the operation of these replaced facilities.

Seaboard's 20-inch pipeline was constructed in 1930-1931 to serve the Washington, D. C. area and points west thereof; it was subsequently extended to serve Baltimore, Maryland and points northeast thereof to the Pennsylvania state line. Because the 20-inch line obtained its gas supply from limited local production in the Kentucky and West Virginia Appalachian Region, the parent company of Seaboard, Columbia Gas System, Inc., expanded Seaboard's facilities in 1950 by the construction of a new 26-inch line which obtained its supply of gas principally from the southwest United States.

In 1964, Seaboard decided to abandon the 20-inch existing line, which operates up to 425 psig maximum, and replace it with a like diameter but stronger pipe capable of operation at 1000 psig maximum.

The replaced line of approximately 285 miles in length will cost an estimated $25,000,000. Subordinate thereto, but not directly subject to this order, are necessary co-ordinate facilities of United Fuel, Seaboard's affiliate in the Columbia Gas System, costing an estimated $11,500,000, consisting of 20-inch pipelines, all as more fully described in the record in Docket No. CP65–102, *et al.*, particularly Exhibit 102.

Seaboard did not, and has not, filed an application for a certificate to perform the acts herein described.[1]

Seaboard's apparent replacement schedule is as follows.

In 1964 Seaboard replaced approximately 37 miles of the 20-inch line between Covington and Lexington, Virginia.

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[1] Seaboard seeks authority in its application in Docket No. CP65-122 to replace approximately 16 miles of its 20-inch line with 26-inch diameter pipe between Owings Mill and Manor Road, Maryland at a cost of $2.03 million. It did not apply for abandonment of the existing line under Section 7(b).

In 1965, Seaboard replaced approximately 35 miles between Waynesboro and Bickers, Virginia (Tr. 1237, 6535-6567).

In 1966, Seaboard intends to replace 35 miles between Bickers and the Rappahanock River. (Tr. 6531).

In 1967, Seaboard intends to replace 40 miles between the Rappahanock River and Dranesville, Virginia (Tr. 6536).

In 1968, Seaboard intends to replace 35 miles between Lexington and Waynesboro, Virginia. (Tr. 6536).

In 1969, Seaboard intends to replace 16 miles between the West Virginia state line and Covington, Virginia. (Tr. 6536).

In 1970, Seaboard intends to replace 43 miles of pipeline in two segments between Lindenchurch, Maryland and Owings Mill, and from Manor Road to Pennsylvania state line. (Tr. 6536).

The 26 miles of pipeline between Dranesville, Virginia and Lindenchurch, Maryland are to be "retired." (Exh. 102)

The 16 miles of 20-inch pipeline between Owings Mill and Manor Road, Maryland are to be replaced with a 26-inch pipeline as proposed in Docket No. CP65-122.

Seaboard has apparently proceeded without certificate authority under its interpretation of the Commission's Rules of Practice and Procedure, Section 2.55, which as pertinent reads:

> For the purposes of Section 7(c) of the Natural Gas Act, as amended, the word "facilities" as used therein shall be interpreted to exclude:
>
> (b) *Replacement of facilities.* Facilities which constitute the replacement of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable: *Provided*, That such replacement will not result in a reduction or abandonment of service rendered by means of such facilities; *Provided, further, That such replacement shall have substantially equivalent designed delivery capacity as the particular facilities being replaced.* [Emphasis added.]

As demonstrated in the heretofore described hearing in Docket No. CP65-102, *et al.*, the replacement of an existing pipeline operating at 425 psig maximum by another of the same diameter but capable of operating at 1000 psig maximum pressure increases the design delivery capacity of the pipeline by a substantial amount. Consequently, said replacement program is not an equivalent replacement but constitutes an expansion of facilities. Moreover, there is no evidence that the existing pipeline is or will be physically deteriorated, particularly in view of the fact that Seaboard is negotiating for the sale of portions of the 1930-1931 line to another gas company, namely, Washington Gas Light Company. Furthermore, abandonment of an existing yet useful facility involves undecided issues of retention of undepreciated investment in Seaboard's rate base, questions of economic feasibility, costs of construction, utilization of alternate means to supply existing customers, and other matters normally determined in a certificate case under Section 7 of the Natural Gas Act.

Additionally, this Commission takes notice, without deciding any of the issues involved, that the facilities, rate base, and services of Atlantic Seaboard Corporation are essential elements of other pending cases of Seaboard before the Commission, namely, Docket No. G-16401 (partial requirements tariff on remand from Court of Appeals); and Docket No. RP65-49 (restructured tariff and rates case), and that the construction of a new pipeline by Seaboard and the implacement of $25,000,000 of new facilities involves irreversible decisions and acts by a utility which ultimately may be contrary to the public interest and the objectives of the Natural Gas Act.

The Commission finds:

In view of the foregoing, it is necessary and appropriate that Atlantic Seaboard Corporation show cause, if there be any, why it has not applied for a certificate of public convenience and necessity authorizing the abandonment of pipeline facilities, and the construction and use of new pipeline facilities on its 20-inch outside diameter pipeline between West Virginia and Pennsylvania and why such failure to apply for and obtain such a certificate prior to commencing the abandonment, construction and use of such facilities should not be held to be a violation of the Natural Gas Act and the Commission's Rules and Regulations issued thereunder.

The Commission orders:

Atlantic Seaboard Corporation shall show cause, if there be any, under oath and in writing, within thirty days from the date of issuance of this order, why the Commission should not find and determine that Atlantic Seaboard Corporation is in violation of the Natural Gas Act and the Commission's Rules and Regulations thereunder by failing to apply for and receive a certificate of public convenience and necessity authorizing the abandonment, construction and use of pipeline facilities on its 20-inch diameter line between West Virginia and Pennsylvania.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COLUMBIAN FUEL CORPORATION, DOCKET NO. G–14101, ET AL.; CITIES SERVICE OIL COMPANY, DOCKET NO. G–20302, ET AL.

ORDER REJECTING APPLICATION FOR REHEARING AND DENYING APPLICATION FOR RECONSIDERATION

(Issued January 25, 1966)

United Fuel Gas Company (United Fuel), on January 7, 1966, filed an application for rehearing and reconsideration of the Commission's order in these proceedings issued December 8, 1965.[1] That order approved a settlement proposal in which the respondent companies agreed, among other things, to refund monies collected in excess of the settlement rates in the various dockets involved. The order directed the release of those refunds which a Commission study had revealed would flow through to the limits of our jurisdictional reach. The remainder of the refunds, including certain amounts which had been collected by Columbian Fuel Corporation (Columbian Fuel) from United Fuel, were ordered to be retained "until further order of the Commission directing the nature of their disposition." (p. 1425)

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[1] Order Approving Rate Settlement Proposal, Severing and Terminating Proceedings and Prescribing Refunds 34 FPC 1424.

In its application, United Fuel asserts that the Commission lacks authority to order the retention of refunds by Columbian Fuel. United Fuel contends also that it is not obligated to flow through the portion of refunds receivable from Columbian Fuel which we ordered the latter to retain. United Fuel asks that rehearing be granted, that the retention requirement be vacated, and that Columbian Fuel be directed to release to United Fuel its portion of the refunds which were ordered to be retained.

The Commission has been presented with filings similar to the application of United Fuel on several previous occasions.[2] As we said on those occasions, an application for rehearing is not appropriate when the order in question merely directs the retention of refunds pending a determination of the method and outcome of their eventual disposition. With respect to the question of refunds, the Commission's order issued December 8, 1965 in these proceedings is not a final action by the Commission. That order was only an interlocutory directive with respect to refunds and does not in any way aggrieve United Fuel. United Fuel will be granted a full opportunity to be heard with respect to its claims that it is entitled to receive and retain the potential refunds from Columbian Fuel affected by our order of December 8, 1965. We have made no determination with respect to United Fuel's claim, and will continue our policy of deferring such a determination until after all interested parties have been given an opportunity to be heard. In view of the fact that the retention requirement is merely interlocutory, and not final action within the meaning of Section 1.34 of our Rules of Practice and Procedure, United Fuel's application for rehearing must be rejected.

Treating United Fuel's filing as an application for reconsideration, we find nothing in the application which demonstrates a need for re-examining or modifying the procedures prescribed in our order issued December 8, 1965. The policies underlying our requirement that Columbian Fuel retain that portion of its refunds which United Fuel and others of its pipeline customers are not expressly obligated to flow through were fully described in our order in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49. In addition, United Fuel makes no persuasive objection to our procedure of separating unquestioned flow through obligations from those which are controverted on the basis of our own analysis of prior settlements and orders rather than by using the alternative technique of requiring reports of intended disposition.[3]

The Commission orders:

(A) United Fuel's application for rehearing of our order issued December 8, 1965, is rejected.

(B) United Fuel's application for reconsideration is denied.

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[2] Order Rejecting Application for Rehearing and Denying Request for Reconsideration, issued February 19, 1965, *United Gas Pipe Line Company*, Docket Nos. RP61-18, RP63-1 and RP65-1, 33 FPC 304. Order Rejecting Application for Rehearing and Denying Request for Reconsideration, issued June 14, 1965, *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, *United Fuel Gas Company*, Docket No. RP65-22, and *Texas Eastern Transmission Corporation*, Docket No. RP65-27, 33 FPC 1263.

[3] United Fuel makes no contention that it is obligated to flow through refunds which we ordered Columbian Fuel to retain or that it is not obligated to flow through amounts which we ordered released.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER FIXING HEARING ON REMAND

(Issued January 25, 1966)

In *Scenic Hudson Preservation Conference, Towns of Cortlandt, Putnam Valley and Yorktown* v. *F.P.C., et al.*, 354 F. 2d 608 (CA2-1965), the Court on December 29, 1965, set aside three orders including our order of March 9, 1965, accompanying our Opinion No. 452, 33 FPC 428, granting a license to Consolidated Edison Company of New York, Inc. (Consolidated Edison) for the construction and operation of the Cornwall Pumped Storage Project, Project No. 2338.[1]

By our order of March 9, 1965, we authorized certain project works of the Cornwall project, including the reservoir, tunnel, powerhouse, and submarine and underground transmission facilities from the powerhouse to and including the Cornwall East Switching Station at Nelsonville, New York, in the Town of Philipstown. A finding was made that the remainder of the transmission line between Nelsonville and the point of interconnection with Consolidated Edison's existing transmission grid should be by overhead lines and not by additional underground cable installation.

In our order of March 9, 1965, we provided for a supplemental hearing for two purposes: (1) to determine which transmission line route from Nelsonville would involve the least scenic impairment and economic loss to the communities involved, and the width of the right-of-way; (2) for the reception of evidence as to the design of fish protection facilities. The supplemental hearing took place in May of 1965. See Opinion No. 452-B, October 4, 1965, 34 FPC 1083.[2]

The Court, remanding the case for further proceedings in accordance with its opinion, pointed out that a project, under Section 10(a) of the Federal Power Act, must be best adapted to a comprehensive plan for improving or developing a waterway for beneficial public uses, including recreation, which "encompasses the conservation of natural resources, the maintenance of natural beauty, and the preservation of historic sites." The Court found that, in applying this standard, we relied on a record which was insufficient as to the adequacy of certain alternatives to the project. In this aspect the Court found the record should be supplemented as to the availability of gas turbines as a possible alternative to the pumped storage project on the basis of savings in cost and other benefits. We should also investigate the availability of sufficient power from interconnected systems to meet Consolidated Edison's peaking needs.

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[1] The Court, besides affirmatively ordering the taking of testimony under Section 313(b) of the Federal Power Act, set aside the following orders: (1) the order of March 9, 1965, issuing a license (Op. No. 452); (2) the order of May 6, 1965 (Op. No. 452-A, 33 FPC 965) denying rehearing of the order issuing license; and (3) a separate order of May 6, 1965, 33 FPC 964, denying joint motions to expand the scope of the supplemental hearing provided for in Opinion No. 452.

[2] The United States Court of Appeals for the Second Circuit points out that it was not asked to review our order of October 4, 1965 (Opinion No. 452-B) relating to the supplemental hearing of May, 1965. *Scenic Hudson Preservation Conference* v. *F.P.C., supra,* fn. 1. *Cf.* fns. 6 and 8. But the Court's action in setting aside the original authorization, plus the order refusing to expand the scope of the second hearing, has the result of leaving the October 4, 1965 order without status as an action requiring or authorizing any action by the Applicant.

On remand, the Court said, we should also examine, on the basis of a supplemented record, the practicality of underground transmission. In the light of the annual savings of the pumped storage project over a steam plant of equivalent capacity, there should be inquiry into the capital and annual costs of running segments of the transmission underground "in those areas where the overhead structures would cause the most serious scenic damage."

As to the fish conservation issue, the Court directed that this whole question should be taken into consideration, on remand, before deciding whether the Cornwall project is to be licensed.

We do not understand the Court's order as restricting any further proceedings to the specific matters on which it found the present record insufficient to support our previous determinations and we do not believe it would be in the public interest to do so. The record in the first two hearings in the proceeding will, of course, be part of the present hearing. But all parties will be free to offer timely presentations of evidence on all matters relevant to the question whether a license should be granted.

In ordering a further hearing herein, we are not setting the dates for introduction of supplementary evidence or cross-examination thereof. Instead we believe that such scheduling can best be done by the Presiding Examiner in the light of a prehearing conference which we are here ordering.

The Commission finds:

A hearing should be held to supplement the record in accordance with the opinion of the United States Court of Appeals for the Second Circuit, rendered December 29, 1965.

The Commission orders:

(A) A prehearing conference will be held on March 22, 1966, at 10:00 a.m. in the Colonial Room, Sheraton-Atlantic Hotel, Broadway and 34th Streets, New York, New York, before the Presiding Examiner. The prehearing conference will develop means of facilitating the hearing, including the consideration of an appropriate date for the hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(e), 10(a), 308 and 313 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held respecting the matters involved and the issues presented in this proceeding. The hearing shall commence in the State of New York at a time and place to be designated by the Presiding Examiner.

(C) Petitions to intervene in the supplementary proceedings may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which petitions to intervene may be filed is February 25, 1966. Those persons or groups already granted intervention in the course of any of the prior proceedings in this proceeding need not file new petitions.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PLATEAU NATURAL GAS COMPANY, DOCKET NO. CP66–154

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1966)

On November 15, 1965, Plateau Natural Gas Company (Applicant) filed in Docket No. CP66–154 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by merger and the operation of all the jurisdictional natural gas facilities of Applicant's wholly-owned subsidiary, Kansas-Colorado Utilities, Inc. (K-C), and the continuation of all sales and services heretofore rendered by K-C, as more fully set forth in the application.

Applicant has heretofore been a nonjurisdictional natural gas distributing company, operating distribution systems in six unconnected divisions. These operations are carried on in the States of Colorado, Kansas, New Mexico, Oklahoma and Texas. Applicant's natural gas requirements are supplied by K-C, Colorado Interstate Gas Company (CIG), El Paso Natural Gas Company, and from certain intrastate sources.

In addition to general plant items, production and gathering facilities and a transmission system in east-central Colorado (Burlington Line) which has heretofore been exempted from the jurisdiction of the Commission by our order issued December 1, 1961, in Docket No. CP62–8, Applicant proposes to acquire from K-C its jurisdictional transmission facilities which comprise two isolated systems. These are the 4- to 8-inch pipeline system extending from the Kansas Hugoton Field into southeastern Colorado (Kansas Line) and the 22-inch pipeline system extending from near Bivins in the Texas Panhandle to Clayton in northeastern New Mexico (Bivins Line). K–C makes no direct sales from any facilities.

The nonjurisdictional Burlington Line is utilized only for service to Applicant for distribution to numerous communities and irrigation customers in Colorado. K-C supplies its Burlington Line requirements by transmission line purchases from CIG.

Deliveries from the Kansas Line are likewise made only to Applicant. Service from the Kansas Line is rendered under K-C's jurisdictional F–1 (Kansas) and G–1 (Colorado) Rate Schedules for distribution to numerous communities and irrigation customers in southeastern Colorado and southwestern Kansas. K-C supplies the requirements of the Kansas Line by Field purchases from producers in Colorado and Kansas and by purchases from CIG.

Until recent years, the operating characteristics of Applicant and K-C were readily distinguished between distribution and transmission functions. In order to serve its growing irrigation market, Applicant has been extending its lines from the distribution centers and has become more like a transmission company.

Applicant proposes to operate the acquired facilities in conjunction with its existing facilities as an integrated company. Applicant will continue K-C's present service in the same manner and at the same rates, except that the existing service by K-C to Applicant will cease.

After the acquisition by merger, Applicant's only jurisdictional sales for resale will be those made from the Bivins Line to Felt Water Development

Company under the I–1 rate schedule (irrigation service) for resale in the Oklahoma Panhandle, to Pioneer Natural Gas Company under the GS–1 rate schedule (general service) for resale in Texline, Texas, and to Southern Union Gas Company under the GS–1, IS–1 (interruptible service) and I–1 rate schedules for resale in Clayton, New Mexico, and irrigation customers in northeastern New Mexico. Service is presently being rendered to these customers by K-C under the indicated rate schedules. Accordingly, the three rate schedules providing for service from the Bivins Line are the only rate schedules to be contained in Applicant's tariff which will supersede K-C's existing rate schedules. The designation, rate level, and conditions of service under Applicant's proposed schedules will be the same as in K-C's existing rate schedules. The merger will not result in any additional capacity, facilities, markets or service, nor will there be any change in gas supply presently available to Applicant and K-C.

Applicant states that the merger will result in increased efficiency and operational flexibility and will result in savings of at least $10,000 per year as a result of the simplification or elimination of duplicate costs which exist in the separately operated parent and subsidiary companies.

Applicant will record the acquired facilities at original cost, together with the related depreciation and depletion reserves, as they presently appear on the books of K-C. Applicant will continue to use the same depreciation rates heretofore used by K-C. There will be an adjustment of $222,019 which represents the unamortized portion of $306,277 excess over net underlying book value incurred by Applicant in acquiring K–C as a subsidiary company in 1956.

Due notice of the filing of the application was published in the Federal Register on December 3, 1965 (30 F.R. 5001). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Plateau Natural Gas Company, a Colorado corporation with its principal place of business in Colorado Springs, Colorado, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the completion of the acquisition by merger and the commencement of service pursuant thereto, under the authorization hereinafter granted.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will continue to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof and the sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Plateau Natural Gas Company authorizing the acquisition and operation of the facilities and the sale of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) The Bivins Line shall not be operated at a pressure in excess of 150 psig, the pressure at which the line is presently being operated.

(E) The certificate issued by paragraph (A) above is further conditioned upon Applicant's receiving all necessary state approvals of the proposed merger.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

SINCLAIR OIL & GAS COMPANY (OPERATOR), ET AL. AND BENEDUM-TREES OIL COMPANY, ET AL., DOCKET NOS. G-16669, G-19821, RI61-120, RI62-126, RI63-113, RI64-155 AND RI65-244

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, SEVERING AND TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued January 25, 1966) *

On November 12, 1965, Sinclair Oil & Gas Company (Sinclair) filed an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and the Commission's Statement of General Policy No. 61-1, as amended (18 CFR 2.56). The offer involves proposed increased rates for the sale of natural gas to Texas Eastern Transmission Corporation (TETC) under Sinclair's FPC Gas Rate Schedule No. 335 in the DeLate Charco Field, Brooks County, Texas (Texas Railroad Commission District No. 4). These proposed rates were suspended in the above-entitled proceeding and thereafter were placed in effect subject to refund.

The presently effective rate is 15.8¢ per Mcf of natural gas at 14.65 psia, and Sinclair proposes a settlement rate of 15.0¢ per Mcf at 14.65 psia for the remainder of the term of the contract and to refund, with applicable interest, all amounts collected in excess of the settlement rate by Sinclair or its predecessor in interest, Benedum-Trees Oil Company.[1] Sinclair also agrees to eliminate the periodic price escalation and favored-nation's provisions from the contract underlying the subject rate schedule.

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* This order was adopted December 9, 1965, before Chairman Swidler left the Commission.

TETC has agreed to the settlement proposal and no protest herein has been filed.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264 issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

For the reason set forth in the *Humble* order issued July 8, 1964, 32 FPC 49, in Docket No. G–9287, *et al.*, we will require Sinclair to retain the refunds resulting from this settlement as hereinafter provided.

Our action in accepting this settlement proposal shall not be construed as approval of any future increased rate filed in accordance with Sinclair's reservation of the right to file increases to cover future tax increases and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Sinclair's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceeding on the basis described herein, as more fully set forth in the settlement proposal filed by Sinclair on November 12, 1965, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective as hereinafter ordered, that the proceedings herein which are consolidated with the area rate proceedings in Docket No. AR64–2, *et al.* be severed, that all of the proceedings herein be terminated and that refunds be made as hereinafter provided.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sinclair on November 12, 1965 is approved in accordance with the provisions of this order.

(B) Sinclair shall file, within 45 days from the date of issuance of this order, a notice of change in rate under its FPC Gas Rate Schedule No. 335 to reflect the settlement rate of 15.0¢ per Mcf and an executed contract amendment as provided for in the said offer of settlement. The notice of change and the contract amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Sinclair shall compute all revenues collected in excess of the 15.0¢ per Mcf settlement rate in Docket Nos. RI62–126, RI63–113, RI64–155 and RI65–244, with applicable interest computed to the date of issuance of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to TETC, setting out the amount of refunds (showing separately the principal and the interest), the basis used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from TETC agreeing to the correctness of such amounts.

(D) Sinclair shall retain the refunds shown in the report required under Ordering Paragraph (C) above, subject to further order of the Commission.

(E) Sinclair may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon TETC. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Sinclair and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

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[1] The amount of refund, exclusive of interest, through December 1, 1965 is approximately $5,400.

(1) Sinclair, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and is such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its service as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company will likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly certifying the amount deposited in the bank or trust company for the quarterly period and any interest accrued thereon.

(F) If Sinclair elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention to do so within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 4.5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that Sinclair has complied with the terms and conditions of this order, the proceedings in Docket Nos. G-16669, G-19821, RI61-120, RI62-126, RI63-113 and RI64-155 are severed from the area rate proceedings in Docket No. AR64-2, *et al.*, and terminated, and Docket No. RI65-244 is terminated.

(H) The Secretary of the Commission shall, by separate letter, direct the pipeline purchaser to report its plans for distribution of the refunds provided for herein. In the event that the pipeline purchaser states that it will flow-through the entire amount of refunds received, the Secretary of the Commission is authorized to advise Sinclair to release the escrowed refunds.

(I) The approval by the Commission of Sinclair's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Sinclair and is without prejudice to claims or contentions which may be made by Sinclair, the Commission staff, or any affected party hereto, in any proceeding.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-49; UNITED FUEL GAS COMPANY, DOCKET NO. RP66-2

ORDER PERMITTING INTERVENTIONS AND DENYING MOTION FOR PRELIMINARY HEARING AND SUBPOENA DUCES TECUM

(Issued January 27, 1966)

These proceedings, which have been consolidated for hearing and decision, involve proposed restructured tariffs of Atlantic Seaboard Corporation (Seaboard) and United Fuel Gas Company (United Fuel) which are both affiliates of the Columbia Gas System. We have previously suspended these tariffs and they have been made effective, subject to refund and hearing in the above-docketed proceedings.

Appalachian Power Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company (Electric Interests) on August 18, 1965, jointly filed a petition for leave to intervene in United Fuel's proceeding in Docket No. RP66-2. Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America (Coal Interests) on October 15, 1965, jointly filed a petition for leave to intervene in Docket No. RP66-2. By order issued August 26, 1965, 34 FPC 593, Appalachian Power Company, and the Coal Interests were permitted to intervene in Seaboard's proceeding in Docket No. RP65-49.[1]

Electric Interests' petition for intervention in United Fuel's rate proceeding in Docket No. RP66-2 alleges that they will be directly injured by the proposed restructured rates because their sales of electric energy compete with sales of natural gas by distributors purchasing gas from United Fuel. Petitioners also cite the fact that United Fuel has intervened in seven State commission proceedings, complaining of electric space heating rates.

Coal Interests also seek intervention in United Fuel's rate proceeding in Docket No. RP66-2 alleging that coal is marketed in competition with natural gas transported and sold by United Fuel, either directly or for resale by distributors, and that the proposed restructured tariffs could result in substantial displacement of boiler fuel sales of gas. Both Electric and Coal Interests contend that having been permitted intervention in Seaboard's rate proceeding in Docket No. RP65-49 they are entitled to intervene in United Fuel's rate proceeding in Docket No. RP66-2, especially since Seaboard's cost of gas is affected by United Fuel's rates.

United Fuel and Seaboard (respondents) filed joint answers, on August 27 and November 15, 1965, opposing the respective petitions for intervention in Docket No. RP66-2 filed by the Electric and Coal Interests and asking that our prior order of August 26, 1965 permitting intervention in Docket No. RP65-49 by the Coal Interests be vacated and set aside. However, they do not seek to have the same order set aside with respect to Electric's intervention. Alternatively, if the Commission denies such relief to respondents they request that a preliminary hearing be held at which the Electric and Coal Interests would be afforded an opportunity to develop an evidentiary record supporting their allegations of threatened competitive injury in Docket No. RP66–2 and a similar opportunity would be afforded to the Coal Interests alone with respect to Docket No. RP65–49. Respondents supplement their request for such alternative relief by additionally seeking the issuance of a subpoena duces tecum in Docket Nos. RP66–2 and RP65–49 directing Coal Interests to provide certain data including the names and identity of all coal unions and coal companies comprising the memberships of the associations seeking intervention, the tonnages and routes of shipments of coal, and all billings and invoices showing prices of delivered coal.

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[1] *Atlantic Seaboard Corporation*, Docket No. RP65-49, Order Denying Reconsideration, issued September 27, 1965, 34 FPC 970. Reconsideration denied by order issued July 29, 1966, 36 FPC 322.

Respondents' contentions are substantially similar to those previously advanced in their opposition to the participation of the petitioners as interveners in Docket No. RP65–49. We have previously considered these very objections and found them insufficient in our prior orders issued therein permitting intervention and denying reconsideration.

The principal objection advanced against intervention by the Electric and Coal Interests, in both dockets, is that neither of the petitioners has alleged specific evidentiary facts supporting its general claim of competitive injury. However, Respondents do not dispute the crucial claim of petitioners that sales of natural gas made by Seaboard and United Fuel are in competition directly or indirectly through their distributor purchasers with sales of electricity and coal made by the parties seeking intervention.

Nor have respondents themselves made any showing which would indicate the likely invalidity of the petitioners' claim that the proposed restructured rates could have an adverse impact upon their sales of electricity and coal. In part, the respondents have sought to justify their restructured rates on the theory that they are necessary to enable "* * * United's wholesale customers to restructure their rates in a manner that makes them more competitive * * *" and that Seaboard purchases the bulk of its gas supply requirements from United.[2] It is equally noteworthy that United Fuel has also sought to justify the restructured rates because they would afford the wholesale customers of Columbia Gas Systems Companies "* * * an opportunity to hold industries which, without proper gas rates, might be lost."

For these reasons, we adhere to the view expressed in our August 26 order permitting intervention that there is no need for a preliminary hearing on the standing of either petitioner since respondents have not raised sufficient question as to the likelihood of competitive injury to warrant the delay and expense of such procedures.

We think that the participation of Electric and Coal Interests may well promote the development of a sounder and more complete record since competitive considerations constitute a major claimed justification for the restructured tariff.

The Commission stated in its Northern Natural Gas Company order in Docket No. G–19040, *et al.*,[3] "It would be improper for the Commission to consider only the evidence introduced by Northern relating to the competitive relationship between coal and gas in support of its alleged rate tilt without providing an opportunity to the parties directly affected to contest the allegations and conclusions concerning their [Coal Interveners] own industry."

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[2] Statement of Reasons Justifying United Fuel's Rate Filing of July 20, 1965, at page 4.

[3] *Northern Natural Gas Co.*, 23 FPC 708, 710

As the Commission further held in *Northern*, Section 15(a) of the Natural Gas Act affords the Commission discretionary authority to permit the intervention of either competitors of a party to such a proceeding or of any other person whose participation in the proceeding may be in the public interest. The Electric and Coal Interests qualify under both these standards, and should be permitted to participate to the extent previously indicated.[4]

The Commission finds:

(1) Intervention by Electric and Coal Interests in the proceedings in Docket No. RP66-2 may be in the public interest.

(2) Respondents' joint motion for an order setting aside the order granting intervention by Coal Interests in Docket No. RP65-49 is lacking in merit and should be denied.

(3) Respondents' joint motion requesting alternative relief, in the form of a preliminary hearing upon the intervention issue held for the purpose of requiring the Electric and Coal Interests to adduce evidence supporting their claim of threatened competitive injury, is lacking in merit and should be denied.

(4) Respondents' joint motion for the issuance of a subpoena duces tecum directed toward the Coal Interests in Docket Nos. RP66-2 and RP65-49 is lacking in merit and should be denied.

The Commission orders:

(A) Electric Interests and Coal Interests are hereby permitted to intervene in proceedings in Docket No. RP66-2, subject to the rules and regulations of the Commission; *Provided, however*, that the participation of such petitioners shall be limited to matters relevant and material to a determination of whether the rate schedules contained in the proposed revised tariff meet the standards of Sections 4 and 5 of the Natural Gas Act; and *Provided, further*, that the admission of such interveners shall not be construed as recognition by the Commission that they might be "aggrieved" by any order or orders issued in these proceedings.

(B) Respondents' joint motions filed August 27, 1965 and November 15, 1965, are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-49; UNITED FUEL GAS COMPANY, DOCKET NO. RP66-2; THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. RP66-5; HOME GAS COMPANY, DOCKET NO. RP66-6; THE OHIO FUEL GAS COMPANY, DOCKET NO. RP66-7; KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. RP66-8

ORDER DENYING CONSOLIDATION OF PROCEEDINGS

(Issued January 27, 1966)

Appalachian Power Company, Wheeling Electric Company, Ohio Power Company and Kentucky Power Company (Electric Interests) filed a motion, on November 23, 1965, seeking consolidation of all six of the above-identified proceedings involving subsidiaries of the Columbia Gas System. All six Respondents and eight of their distributor-customers filed timely answers in opposition.[1] Each of the foregoing proceedings proposes revisions in the rates and tariffs of such subsidiaries and embodies a redesign of rate schedules and the provision of special service under new Winter Service (WS) rate schedules. These proposed tariff changes have been suspended and made effective, subject to refund, by orders issued herein.

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[4] See footnote 1.

Appalachian has been permitted to intervene in Seaboard's pending rate proceeding in Docket No. RP65–49 [2] and by an order issued concurrently herewith the Electric Interests have also been permitted to intervene in United's pending rate proceeding in Docket No. RP66–2, which proceedings have previously been consolidated with Docket No. RP65–49.[3]

The motion to consolidate is based on two grounds: (1) that there are basic issues presented in each of the proceedings which are common; and (2) that consolidation would permit a more expeditious disposition of these proceedings. Significantly, the Electric Interests do not allege that consolidation is necessary or appropriate in order adequately to protect its interests. In this regard, our failure to consolidate does not preclude (to the extent it can be shown to be relevant and material) consideration of the sales and market factors of other affiliates in the determination of just and reasonable rates for United Fuel and Seaboard. Thus, to the extent that the competitive situation of a particular affiliate affects or is alleged to affect the proposed changes in United Fuel's or Seaboard's rate evidence pertaining thereto can and should be received in the underlying consolidated proceeding. Nevertheless, for the reasons stated below, we do not believe that consolidation of these proceedings would expedite their disposition or otherwise would be appropriate.

It is true, as the Electric Interests allege, that there are underlying issues common to each of the proceedings. However, the underlying facts are not the same in most cases. It is also true that some of the initial evidence introduced in these proceedings is substantially identical; but much of it is unrelated. This is particularly true respecting the fundamental cost of service data. Moreover, the Electric Interests concede that the level of restructured rates of the various affiliates were arrived at by inconsistent, *i.e.*, different procedures.

Furthermore, consolidation would compel each intervenor to participate in a complex and massive proceeding dealing with a host of issues in which it has no interest and a relatively small number of issues in which it has a direct interest. On balance, we believe that consolidation would create an unwieldy proceeding where the rights of the distributor-customers would be lost in a maze of testimony and exhibits not pertinent to the particular supplier of an individual customer.

We therefore find that consolidation of the above-identified six rate proceedings in a single docket for the purposes of simultaneous hearing and decision would delay rather than expedite these proceedings, and is inappropriate, and not in the public interest.

The Commission orders:

The motion of Electric Interests filed November 23, 1965, for consolidated hearing and decision in the above-captioned proceedings, is denied.

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[1] The eight distributor-customers who filed answers to the motion to consolidate are: Baltimore Gas & Electric Company; City of Charlottesville, Virginia; Cincinnati Gas & Electric Company and Union Light, Heat and Power Company; Commonwealth Natural Gas Corporation; Dayton Power and Light Company; New York State Electric and Gas Corporation; and Roanoke Gas Company.

[2] Order Granting Intervention issued August 26, 1965, 34 FPC 593, and Order Denying Reconsideration issued September 27, 1965, in Docket No. RP65–49, 34 FPC 970.

[3] Order issued September 14, 1965 in Docket No. RP65–49.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER AMENDING AND SUPPLEMENTING ORDERS PRESCRIBING FISH FACILITIES

(Issued January 28, 1966)

On December 29, 1965, Idaho Power Company, licensee for Project No. 1971 consisting of the Brownlee, Oxbow and Hells Canyon developments on the Snake River, filed a motion for issuance of a proposed order which would amend and supplement previous orders prescribing fish facilities for Project No. 1971. Together with the motion there were filed copies of a stipulation, with respect to fish facilities for Project No. 1971, entered into by the licensee, the Department of the Interior and the fish and game agencies of the States of Oregon and Idaho. By said stipulation the parties thereto agreed and proposed that the Commission require the construction, maintenance and operation of fish facilities substantially as ordered herein. The stipulation implements in substantial part the recommendations of the interested State and Federal fishery agencies set out in a revised statement, dated August 18, 1965, titled "Policy for the Perpetuation and Management of Anadromous Fish in Snake River Drainage Upstream from Salmon River".

The Oregon agencies request that this order be issued without prejudice to their asserting claims in the future for additional facilities for steelhead trout or for modification of the steelhead smolt distribution program. As we noted in our order issued December 11, 1963 (30 FPC 1471), these orders are interim in nature and are subject to such further changes as may be necessary.

The Commission finds:

It is consistent with the public interest that an order be issued amending and supplementing previous orders prescribing fish facilities for Project No. 1971 pursuant to Article 35 of the license.

The Commission orders:

(A) The Licensee shall construct, operate and maintain or provide for the construction, operation and maintenance of floating trap and hoist devices for trapping upstream migrants at the Hells Canyon powerhouse, said facilities to be completed, tested and ready for operation before closure of the Hells Canyon diversion tunnel; on closure of the Hells Canyon diversion tunnel all upstream migrants shall be trapped at said facilities.

(B) The Licensee shall construct, operate and maintain or provide for the construction, operation, and maintenance of a redesigned sorting and holding facility for adult fall chinook and steelhead migrants at the Oxbow artificial propagation facility heretofore prescribed, the reconstructed facility to be in operation by September 1, 1966.

(C) Paragraphs (B), (C), and (D)(ii) of the Commission's order issued December 11, 1963 (30 FPC 1471), are hereby modified to provide for the alternate handling of steelhead trout and spring chinook salmon as provided herein, and for transporting to the Rapid River hatchery adult spring chinook salmon or steelhead trout in number equal to the capacity of its holding pond. All adult fall chinook salmon and adult steelhead trout up to the capacity of the Oxbow holding facility shall be transported by the Licensee to the Oxbow holding and sorting facility. Immature (jack) migrants and adult spring chinook salmon and steelhead trout in excess of the capacity of the holding ponds at Oxbow and Rapid River shall be released in Snake River below Oxbow dam or in some other stream entering the Snake River below Oxbow dam as determined by the fishery agencies, pending further provisions.

(D) For the conservation of the steelhead trout fishery resource, the Licensee shall:

(i) Acquire the necessary land and construct and maintain fish hatchery and appurtenant facilities near Snake River in the vicinity of Buhl, Idaho, suitable for hatching from eggs and rearing to smolt size 200,000 pounds of steelhead trout annually, said hatchery and appurtenant facilities to be ready for operation by July 1, 1966;

(ii) Acquire the required land and construct and maintain smolt holding (acclimation) ponds and appurtenant facilities in Lemhi County, Idaho, near the confluence of Big Springs Creek and Lemhi River (in or near Section 13, Township 16 North, Range 25 East, BM), with an aggregate volume of 140,000 cubic feet, said ponds and appurtenant facilities to be ready for operation by March 1, 1967;

(iii) Construct and maintain at the site of the Idaho Fish and Game Department upstream trapping facilities near Lemhi, Idaho, holding and sorting facilities and egg-eyeing facilities capable of incubating 3,300,000 steelhead trout eggs, together with appurtenant facilities, said facilities to be ready for operation by February 1, 1970;

(iv) Be responsible for annual transportation of smolts from the facilities near Buhl to the Lemhi River facilities during a six weeks period each spring previous to smolting as determined by the Idaho Department of Fish and Game; and

(v) Contract with the Idaho Department of Fish and Game for operation, for a period of eight years, of the facilities prescribed in this Paragraph D, and for transportation to the Buhl facilities of eyed eggs from the Licensee's Oxbow hatchery or alternately from the Lemhi facilities; Licensee shall pay all reasonable costs of operation of facilities and transportation of eggs, including the operating cost of the presently installed weir on the Lemhi River;

(vi) Provided, that on review and evaluation of the operation of the aforesaid facilities for steelhead trout, any changes, modifications, plans for continuing operations or termination, including disposition of facilities, at the end of the contract period, shall be made by stipulation of the Licensee and the interested State and Federal fishery agencies as approved by the Commission or by order of the Commission on its own motion or upon application of any interested party after opportunity for hearing.

(E) Licensee shall not commence construction of the facilities prescribed herein until the Commission shall have approved functional drawings which shall be prepared by the Licensee in accordance with the stipulation respecting fish facilities entered into by the Licensee, the Department of the Interior and the fish and game agencies of the States of Oregon and Idaho and dated December 29, 1965, and which shall be submitted by the Licensee for prior approval by a coordinating engineer designated by the State and Federal agencies.

(F) The Licensee shall consult and cooperate with the fishery agencies in determining upon a mutually satisfactory program to be financed by the Licensee for the purpose of evaluating and recording the degree of success achieved, in terms of maintenance of the fishery resource, by the artificial propagation and other facilities heretofore prescribed and as supplemented by this order. Should the Licensee and the fishery agencies be unable to agree upon the terms of the program, the Commission reserves the right to determine the same after notice and opportunity for hearing. The Licensee shall furnish to the Commission on a timely basis reports on evaluation studies and operations financed by the Licensee.

(G) Paragraph (C)(ii) of the Commission's order issued February 12, 1958 (19 FPC 237), is modified to provide for discontinuance of use of the Oxbow dam spillway trap after June 1966 and abandonment of the underwater foundation features of the proposed Oxbow powerhouse trapping facilities.

(H) Paragraph (C)(i) of the Commission's order issued November 17, 1960 (24 FPC 962), as modified by the order of May 17, 1963 (29 FPC 1058), is modified to provide that the Licensee shall release a minimum flow of 100 cfs through the Oxbow spillway at all times.

(I) Nothing herein shall be construed as full compliance with the provisions of Article 35 of the license for Project No. 1971.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-50

ORDER PERMITTING INTERVENTION AND SETTING DATE OF HEARING

(Issued January 28, 1966)*

The above-docketed application of Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-50 on August 13, 1965, was the subject of Commission notice issued August 23, 1965, and published in the Federal Register on August 28, 1965 (30 F.R. 11156). In essence Applicant seeks certificate authorization for the transportation of natural gas in interstate commerce and the construction and operation of a new measuring and regulating station and approximately 15.3 miles of 4-inch and 8-inch laterals in Callaway and Audrain Counties, Missouri, for delivery of up to 3,000 Mcf daily of natural gas on an interruptible basis to H. K. Porter Company, Inc., (Porter) for use by Porter in the firing of brick kilns. Supplemental information was filed by Applicant on October 13, 1965.

The City of Fulton, Missouri, filed a petition to intervene in the proceeding on October 29, 1965, which was answered and objected to by Applicant on November 22, 1965. The Reply of The City of Fulton to the objection and answer of Applicant was filed November 26, 1965.

The Commission finds:

It is desirable to allow The City of Fulton, Missouri, to become an intervenor in this proceeding in order that it may establish the facts and law from which the nature and validity of its alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The City of Fulton, Missouri, is permitted to become an intervenor in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in its said petition for leave to intervene; and *provided, further*, that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

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* Rehearing denied by order issued March 14, 1966, 35 FPC 377.

(B) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held on February 28, 1966, at 10:00 a.m. (EST) in a Hearing Room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., concerning the matters involved in and the issues presented by the application and supplemental information filed in this proceeding.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ST. MICHAELS UTILITIES COMMISSION, ET AL. v. EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, ET AL., DOCKET NO. E-7114, ET AL.

ORDER DENYING PETITION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE

(Issued January 28, 1966)

On January 24, 1966, petitions for leave to participate in the oral argument scheduled for February 1, 1966 in the above-entitled proceeding, as *amicus curiae*, were filed with the Commission by ten municipal utilities in Wisconsin, namely, the Cities of Boscobel, Columbus, Cuba City, Juneau, Lodi, Plymouth, Princeton, Sheboygan Falls, Sun Prairie and Waupun.

Good cause has not been shown for granting the petitions for leave to participate in the oral argument in the above-entitled proceeding as *amicus curiae*.

The Commission orders:

The petition filed by the ten municipal utilities in Wisconsin mentioned above for leave to participate in the oral argument in the above-entitled proceeding on February 1, 1966, as *amicus curiae* are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED NATURAL GAS COMPANY AND EMPIRE GAS AND FUEL COMPANY, DOCKET NO. CP66-145

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1966)

On November 9, 1965, United Natural Gas Company (United) and Empire Gas and Fuel Company (Empire), wholly-owned subsidiary companies of National Fuel Gas Company (National), filed in Docket No. CP66-145 an application, as supplemented on November 26, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing United to acquire by merger and to operate all of the jurisdictional natural gas facilities of Empire and to perform all acts, sales and services now being performed by Empire, as more fully described in the application.

Empire currently produces natural gas from its own wells in Sharon and Oswayo townships, Potter County, Pennsylvania. This production is delivered to Iroquois Gas Corporation (Iroquois), another wholly-owned subsidiary of National. Iroquois distributes and sells the gas in the State of New York. Empire's service to Iroquois is rendered pursuant to a contract dated December 9, 1938, which is Rate Schedule L–1, Empire's FPC Gas Tariff, Original Volume No. 1.

Upon consummation of the merger, the facilities acquired by United will be operated by the employees of United in the same manner as they are now operated by Empire. United will maintain separate records of the plant, revenues and expenses related to the production of gas in Potter County, Pennsylvania, and its delivery and sale to Iroquois. United will continue the service to Iroquois by adopting and filing Empire's contract designated as Rate Schedule L–1 and redesignating it as United's Rate Schedule X–8, FPC Gas Tariff, Original Volume No. 2.

The purpose of the merger, as stated in the application, is to simplify the corporate structure of National in line with the policies of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935.

The merger will be effected by United issuing 6,802 shares of no-par capital stock to National in exchange for the 2,000 shares of Empire's $100 par capital stock now held by National. The proposal is economically feasible.

The merger has been approved by the Pennsylvania Public Utility Commission by its order issued December 13, 1965.

Due notice of the filing of the application was published in the Federal Register on November 25, 1965 (30 F.R. 14696). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G–328 (3 FPC 959).

(2) Empire Gas and Fuel Company, a Pennsylvania corporation having its principal place of business in Buffalo, New York, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 1, 1943, in Docket No. G–300 (3 FPC 1013).

(3) The facilities hereinbefore described and as more fully described in the application in this proceeding are being used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition thereof and the sales of natural gas to be continued by United are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) United is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The acquisition and operation of the facilities and the transportation and sale of natural gas by United are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United Natural Gas Company and Empire Gas and Fuel Company authorizing the acquisition by merger of Empire by United, the operation of the acquired facilities and the sale of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon United's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d) and (e) of Section 157.20 of such Regulations.

(C) This order is not to be construed as in any way altering the obligations of United under the rate settlement agreement approved by the Commission on June 13, 1962, in Docket No. G-17763, 27 FPC 1241.

(D) The acquisition by merger authorized by paragraph (A) above is conditioned upon United's receipt of authorization for the merger from the Securities and Exchange Commission.

(E) Empire's Rate Schedule L-1, FPC Gas Tariff, Original Volume No. 1 is redesignated as United's Rate Schedule X-8, FPC Gas Tariff, Original Volume No. 2.

(F) The acquisition shall be completed and the facilities placed in actual operation and the sale of natural gas by United, as authorized in paragraph (A) above, shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION,
DOCKET NO. CP65-227

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 31, 1966)

On December 9, 1965, Mississippi River Transmission Corporation (Petitioner) filed in Docket No. CP65-227 a petition to amend the certificate of public convenience and necessity issued in said docket on May 4, 1965, 33 FPC 956, by extending to March 31, 1966, the time allowed to construct a portion of the 900 horsepower authorized for Petitioner's Woodlawn Field, Harrison County, Texas, as more fully described in the petition to amend.

Petitioner states that subsequent to the authorization for the 900 additional horsepower it made additional studies which indicated additional compression would not be required and therefore made no plans to install the authorized facilities.

Actual operation during the present heating season resulted in a pressure decline greater than anticipated and Petitioner will require an additional 225 horsepower to maintain production at the rate needed for operation during the present heating season.

Petitioner states that although it began preparation for the prompt installation of the 225 horsepower compressor as soon as the need for it became apparent, delivery and work schedules are such that installation cannot be completed in the time allowed in the aforementioned order.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's certificate issued May 4, 1965, in Docket No. CP65–227 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. CP65–227 issued May 4, 1965, is amended by extending to March 31, 1966, the allowed time during which Petitioner may install 225 compressor horsepower in the Woodlawn Field, Harrison County, Texas, as hereinbefore described and as more fully set forth in the petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA,
DOCKET NO. CP66–140

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued January 31, 1966)

On November 3, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66–140 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional daily contract quantity of 1,000 Mcf of gas to Iowa Electric Light and Power Company (Iowa Electric), an existing customer, all as more fully set forth in the application in this proceeding.

Applicant states that it has been advised by Iowa Electric that the latter desires the additional daily contract quantity for resale to Monsanto Company, an existing industrial customer of Iowa Electric. Monsanto now uses natural gas and will use the requested additional quantities of gas as a raw material in the manufacture of agricultural fertilizers.

The proposed additional volume will increase Iowa Electric's daily contract quantity with Applicant from the present 39,496 Mcf to 40,496 Mcf.

No additional facilities will be required for the proposed sale.

On November 5, 1965, Applicant tendered for filing a service agreement between the two parties, dated October 29, 1965, providing for the proposed sale.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The proposed sale and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce, subject to the jurisdiction of the Commission and such sale and delivery by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) The service agreement between Applicant and Iowa Electric, dated October 29, 1965, tendered for filing on November 5, 1965, should be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one month from the date on which this order issues.

(D) The service agreement between Applicant and Iowa Electric, dated October 29, 1965, tendered for filing on November 5, 1965, is accepted for filing to become effective on the date this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-114

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULES FOR FILING

(Issued January 31, 1966)

On October 18, 1965, United Gas Pipe Line Company (United) and Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP66-114 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the exchange of natural gas on a gas for gas basis pursuant to the terms of a contract between United and Transco dated June 23, 1965,[1] all as more fully set forth in the application.

United and Transco propose to install two separate interconnections between their respective systems, with deliveries being made by Transco to United through facilities located at Point *A*, and redeliveries being made by United to Transco through Point *B*, described and identified as follows:

POINT A

United Gas Pipe Line Company [2]

Install positive meter station and appurtenant facilities on Transcontinental Gas Pipe Line Corporation's 6-inch Gueydan Field lateral at Gueydan Booster Station No. 13 site, in Section 33, Township 11 South, Range 1 West, Vermilion Parish, Louisiana, to render natural gas service to Gueydan, Vermilion Parish, Louisiana.

Transcontinental Gas Pipe Line Corporation

Install 2-inch tap on 6-inch Gueydan Field lateral located on Gueydan Booster Station No. 13 site, in Section 33, Township 11 South, Range 1 West, Vermilion Parish, Louisiana.

POINT B

United Gas Pipe Line Company

Construct approximately 800 feet of 2⅜-inch pipeline, orifice meter station and appurtenant facilities beginning at approximately Milepost 26 on the Lirette-Napoleonville 24-inch pipeline in Section 35, Township 17 South, Range 16 East, Terrebonne Parish, Louisiana, and ending at a point on Transcontinental Gas Pipe Line Corporation's 20-inch pipeline Compressor Station No. 062 site in Section 35, Township 17 South, Range 16 East, Terrebonne Parish, Louisiana.

Transcontinental Gas Pipe Line Corporation

Install 2-inch tap on 20-inch pipeline at Compressor Station No. 062 site in Section 35, Township 17 South, Range 16 East, Terrebonne Parish, Louisiana.

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[1] Designated as United's Rate Schedule X-18 (Original Sheet Nos. 109-116 to United's FPC Gas Tariff, Original Volume No. 2), and as Transco's Rate Schedule X-43 (Original Sheet Nos. 330-335 to Transco's FPC Gas Tariff, Original Volume No. 2). These were filed on November 5 and 15, respectively.

[2] Application for Exemption pursuant to Section 1(c) of the Natural Gas Act filed October 29, 1965, and granted by order issued concurrently herewith in Docket No. CP66-137, *infra*, p. 172.

United proposes to construct, own, operate and maintain any and all lines and facilities necessary to effect the exchange of natural gas; provided, Transco will install and own, in accordance with Transco's standard specifications, such tap and flange connections as may be necessary on Transco's facilities at the points of delivery (United to reimburse Transco for the cost of such tap and flange connections). The cost to United, including the cost of Transco's tap and flange connections is estimated to be $22,991, and will be defrayed from funds on hand.

United and Transco with respect to their respective rate filings request waiver under Section 154.22 of the Commission's Regulations; United requests an effective date of November 15, 1965, and Transco requests as an effective date the date of certificate authorization. Waiver is deemed appropriate with an effective date being the date of issuance of this order.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 139).

(3) The proposed construction and operation of facilities and exchange of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) United and Transco are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon United and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that United's proposed Rate Schedule X–18 and Transco's proposed Rate Schedule X–43 filed on November 5, and 15, respectively, be accepted for filing, effective

on the date of the issuance of this order, and that with respect thereto the requirements of Section 154.22 of the Commission's Regulations be waived.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United and Transco in this proceeding, authorizing the construction and operation of facilities and the exchange of natural gas as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon United and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) United's proposed Rate Schedule X-18 (Original Sheets Nos. 109-116 to United's FPC Gas Tariff, Original Volume No. 2), and Transco's Rate Schedule X-43 (Original Sheet Nos. 330-335 to Transco's FPC Gas Tariff, Original Volume No. 2), filed November 5 and 15, respectively, are accepted for filing effective on the date of issuance of this order.

(E) The notice requirements of Section 154.22 of the Commission's Regulations with respect to the rate filings of United and Transco are waived.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-137

DECLARATION OF EXEMPTION

(Issued January 31, 1966)

United Gas Pipe Line Company (Applicant) filed an application on October 29, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof, of certain natural gas facilities and service proposed to be rendered thereby, to be located near Gueydan, Louisiana, all as more fully set forth in the application.

Applicant, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is engaged in the transportation and sale of natural gas in the State of Louisiana, and in connection therewith proposes to install and operate natural gas facilities, and to sell and deliver natural gas to the Town of Gueydan, Louisiana, under its G-SWL Rate Schedule, which is on file with and approved by the Louisiana Public Service Commission.

The facilities requested to be exempted consist of a tap, metering, and regulating facilities at a point on Transcontinental Gas Pipe Line Corporation's Gueydan Field lateral in Vermilion Parish, Louisiana, which will be utilized in providing the proposed natural gas service, and to which the distribution facilities of the Town of Gueydan will be connected. The natural gas for the proposed service will be obtained from Transcontinental Gas Pipe Line Corporation pursuant to certificate authorization sought in Docket No.

CP66–114 and granted by order issued therein concurrently herewith, *supra*, p. 170.

Applicant states that all of the gas obtained from Transcontinental Gas Pipe Line Corporation will be sold and delivered to the Town of Gueydan, Louisiana, for consumption in the State of Louisiana; and that the said gas is produced in the State of Louisiana.

The Louisiana Public Service Commission has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates, service and facilities of the Applicant to be exempted and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

The facilities of United Gas Pipe Line Company consisting of a tap, metering and regulating facilities near the Town of Gueydan, Louisiana, located at a point on Transcontinental Gas Pipe Line Corporation's Gueydan Field lateral in Vermilion Parish, Louisiana, and the service to be rendered thereby to the Town of Gueydan are exempt from the provisions of the Natural Gas Act, and the orders, rules, regulations of the Commission issued thereunder.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOUTHERN UNION GAS COMPANY, G-513; DEL NORTE NATURAL GAS COMPANY, CP66-104; EL PASO NATURAL GAS COMPANY AND EL PASO GAS TRANSPORTATION CORPORATION, CP66-105; DEL NORTE NATURAL GAS COMPANY, CP66-106

ORDER DENYING REHEARING AND STAY

(Issued February 1, 1966)

On January 14, 1966, Juarez Gas Company, S. A. (Movant), filed a motion for stay and an application for rehearing of the orders of the Commission issued December 29, 1965, in Docket Nos. G-513, CP66-104 and CP66-105, 34 FPC 1584, 1588, and the permit released concurrently therewith in Docket No. CP66-106. By order issued in Docket Nos. CP66-104 and G-513 the Commission authorized Del Norte Natural Gas Company (Del Norte) to export natural gas from the United States to Mexico in lieu of Southern Union Gas Company (Southern Union) and terminated the authorization theretofore issued to Southern Union in Docket No. G-513. Del Norte proposes to continue the sale and delivery of natural gas to Movant for resale and distribution in Ciudad Juarez, Chihauhau, Mexico, and to initiate the sale of natural gas to Gas Natural de Juarez, S.A. (Gas Natural), a new distributor, for resale and distribution in Ciudad Juarez. Del Norte will lease existing and new facilities from Southern Union to export gas. Said order also denied the petition for leave to intervene filed by Movant in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106. By order issued in Docket No. CP66-105 the Commission permitted and approved the abandonment of the sale of natural gas by El Paso Natural Gas Company to Southern Union and authorized the sale of natural gas to Del Norte. Said order also permitted and approved the abandonment of the transportation of natural gas by El Paso Gas Transportation Corporation for Southern Union and authorized the initiation of such service for Del Norte, together with the construction and operation of facilities therefor. In Docket No. CP66-106 the Commission released a permit authorizing Del Norte to operate, maintain and connect facilities at the international boundary to export natural gas and revoking the permit theretofore issued to Southern Union.

In its petition for leave to intervene Movant had alleged that it is not consistent with the public interest to authorize the exportation of natural gas pursuant to Section 3 of the Natural Gas Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier and further that Gas Natural probably would not be able to secure the requisite federal, state and municipal authorizations to import and distribute gas. These allegations are reiterated in the application for rehearing. It was pointed out in the order denying the petition for leave to intervene that it is not within the Commission's province to determine which of two distributors has the legal right to distribute natural gas in a community within a state where the issue has been raised. *American Louisiana Pipe Line Company, et al.*, Docket No. G-2306, *et al.*, 28 FPC 41. With respect to the allegation that Gas Natural probably will not receive the necessary import and distribution authorizations, it should be noted that the order authorizing the exportation of natural gas issued in Docket No. CP66-104 is conditioned upon the receipt of appropriate import authorization and is without prejudice to any action taken by any authority in Mexico.

We said in the order denying Movant's petition and we repeat here that the Federal Power Commission is not the proper forum in which Movant can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. Any such determinations must be made in Mexico by the Mexican authorities having jurisdiction over such matters. If Gas Natural is denied authorization in Mexico to import and/or distribute natural gas, then Del Norte cannot export natural gas for delivery to Gas Natural.

The application for rehearing does not set forth any new facts or principles of law which indicate that the Commission was in error in denying Movant's petition or in issuing the orders and permit.

The Commission finds:

The assignments of error and grounds for rehearing set forth no new facts or principles of law which either were not fully considered by the Commission when it issued the orders in Docket Nos. G-513, CP66-104 and CP66-105 and the permit in Docket No. CP66-106, or which having now been considered, warrant any change or stay of said orders and permit.

The Commission orders:

The application for rehearing and the motion for stay filed January 14, 1966, by Juarez Gas Company, S. A., are denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING AND MONSANTO COMPANY, DOCKET NO. AR61-1

ORDER REJECTING QUALITY STATEMENT

(Issued February 2, 1966)

Monsanto Company (Monsanto), a respondent in the *Permian* case, submitted on January 10, 1966, in purported compliance with paragraph (F)(1) of Opinion No. 468, as amended by Opinion No. 468-A, 34 FPC 159, 1068, a quality statement with respect to the sale of "old" residue gas (derived from casinghead gas) to El Paso Natural Gas Company (El Paso) from the Dollarhide Plant in the Permian Basin of Texas under Monsanto's FPC Gas Rate Schedule No. 5. The quality statement, which was signed by both Monsanto and El Paso, shows that the quality of the gas meets the standards prescribed in Opinion Nos. 468 and 468-A. However, it also shows an upward adjustment of 0.21¢ per Mcf for the sale of gas at a delivery pressure of 550 psig, 50 psig in excess of the 500 psig minimum standard provided in Opinion No. 468-A. Monsanto thus proposes to establish a total rate of 14.71¢ per Mcf (14.5 area base rate, plus 0.21¢ adjustment for delivery pressure).

As indicated below, our *Permian* decision does not authorize an upward adjustment for gas delivered at pressures in excess of 500 psig. We must therefore reject as unacceptable the quality statement tendered by Monsanto and shall require it to submit a new quality statement in accordance with Opinion Nos. 468 and 468-A.

In Opinion No. 468 we provided for a downward adjustment from the applicable area base rate for the sale of gas at a delivery pressure below 800 psig, and in Opinion No. 468-A we reduced the minimum delivery pressure standard from 800 psig to 500 psig. The modification was made in Opinion No. 468–A because certain existing pipeline facilities in the Permian area were constructed to receive gas at approximately 500 psig. The lower delivery pressure requirement did not reflect in any way a belief that when gas was delivered at pressures in excess of 500 psig the producer should receive a higher rate. In Opinion No. 484 issued January 6, 1966, 35 FPC 40, *El Paso Natural Gas Company, et al.*, Docket No. CP64–211, *et al.*, where this same point was involved in a certificate case, we refused to allow the producers there to obtain premium rates for the sale of "new" gas above the applicable just and reasonable rate ceilings determined in *Permian* based on delivery pressures in excess of the 500 psig minimum standard. Similarly here we reject Monsanto's attempt to obtain an unwarranted premium rate.

The Commission orders:

For the reasons set forth above, the quality statement tendered by Monsanto on January 10, 1966, with respect to sales under its FPC Gas Rate Schedule No. 5 is rejected. Monsanto shall within 75 days of the date of issuance of this order submit a satisfactory quality statement in accordance with the provisions of Opinion Nos. 468 and 468–A.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

JAMES P. EVANS, JR., ET AL., DOCKET NO. RI60–237; UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP65–15

ORDER AMENDING ORDER RELEASING REFUNDS

(Issued February 2, 1966)

On January 10, 1966, United Gas Pipe Line Company (United) filed a motion in the above-docketed proceeding requesting amendment of the Commission's order of July 7, 1965, 34 FPC 10, which required James P. Evans, Jr., *et al.* (Evans) to make the refunds to United that we had previously ordered Evans to retain pending further order of the Commission in approving its settlement offer in Docket No. RI60–237 on November 4, 1964, 32 FPC 1269. In the order of July 7, 1965, we ordered United to retain certain of the refund monies it would receive from Evans pending further order of the Commission. United, *inter alia*, was given the option of commingling such retained monies with its general assets, and to use them for its corporate purposes with the obligation to pay interest thereon at the rate of 6% per annum from November 30, 1965, to the date they are paid by United pursuant to the final order of the Commission. United elected to commingle such retained funds and pay interest thereon.

United now requests that we amend the order of July 7, 1965, to conform with our determination in Opinion No. 468, *Area Rate Proceeding*, Docket No. AR61–1, *et al.*, 34 FPC 159 (issued August 5, 1965) that the proper rate of interest for refund monies so retained and commingled with general corporate funds was 4.5% per annum, that being the prime rate of interest at the time of issuance of said opinion. Such prime interest rate also prevailed at the time of issuance herein of the order of July 7, 1965. It is appropriate that we accordingly amend the order of July 7, 1965, to provide for an interest rate of 4.5% per annum on the monies United has elected to retain.

The Commission orders:

(A) The Motion for Amendment of the order issued in these proceedings on July 7, 1965, filed by United on January 10, 1966, is granted.

(B) Ordering Paragraph (C) of the order issued herein on July 7, 1965, is amended so as to provide that United shall pay interest on the refund monies it has elected to commingle with its general assets at the rate of 4.5% per annum from November 30, 1965, to the date on which the refund monies ordered to be retained are paid over to the person or persons ultimately determined to be entitled thereto in a final order of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GENERAL AMERICAN OIL COMPANY OF TEXAS, DOCKET NO. RI66–274; A. H. MEADOWS, DOCKET NO. RI66–275

ORDER PROVIDING FOR HEARINGS ON AND SUSPENSION OF PROPOSED CHANGES IN RATES[1] AND REJECTING QUALITY STATEMENTS

(Issued February 2, 1966)

General American Oil Company of Texas (General American)[2] and A. H. Meadows (Meadows),[3] respondents in the *Permian* case, severally tendered for filing on January 3, 1966 notices of change wherein they propose periodic and partial tax reimbursement increases in rates from 17.1843¢[4] per Mcf to 18.1978¢[4] per Mcf at 14.65 psia for their jurisdictional sales of residue gas derived from casinghead gas to El Paso Natural Gas Company (El Paso) from leases in Sweetie Peck Field, Midland County, Texas District No. 8. The said notices of change are designated as follows:

Respondent	Rate schedule No.	Supplement No.	Amount of annual increase	Effective date
General American	32	6	$66	Feb. 3, 1966[6]
Meadows	[5] 1	3	48	Feb. 3, 1966[6]

In support of the proposed increased rates, respondents concurrently tendered for filing Rate Schedule-Quality Statements, in purported compliance of Ordering Paragraph (C) of Opinion No. 468–A, 34 FPC 1068 at 1079, wherein they indicate that the applicable area rate for the two sales is 15.32¢ per Mcf. Respondents' quality statements indicate the following quality adjustments for the casinghead gas delivered to El Paso: (1) cost of 0.1¢ per Mcf for removal of water content, (2) cost of 3.08¢ per Mcf for compression from 30 psig to 500 psig minimum standard, and (3) a Btu upward adjustment of 4.0¢ per Mcf from the maximum standard of 1050 Btu's to 1340 Btu's, which is the Btu content of the casinghead gas. The quality statements further indicate that the rate established for the two sales based on contract provisions is 14.6501¢ per Mcf, exclusive of tax reimbursement. This rate is equivalent to the contract base of 18.0¢ per Mcf, less 3.3499¢ per Mcf contract charge for the aforementioned service performed by El Paso. To the 14.6501¢ per Mcf rate, the respondents add 0.1978¢ per Mcf tax reimbursement, and result in a total contract rate of 14.8479¢ per Mcf. Respondents thus contend that the applicable area ceiling rate of 15.32¢ per Mcf, after all quality adjustments, exceeds the increased rates filed for herein. The contracts underlying the rate schedules involved herein are of the *Spraberry* type, discussed on page 209 of Opinion No. 468, 34 FPC 159, except for the fact that the respondents do not share the revenues that El Paso receives from the sale of the extracted liquids.

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[1] These proceedings are not consolidated for hearing.

[2] Address is: 1800 First National Bank Building, Dallas, Texas 75206.

[3] Address is: Meadows Building, Dallas, Texas 75206.

[4] Subject to deduction of 3.3499¢ per Mcf for gathering, treating and compression.

[5] A. H. Meadows' currently collected rate of 17.1843 cents per Mcf is in effect subject to refund in Docket No. RI60–248.

[6] The stated effective date is the effective date requested by respondents.

The issue presented by the subject filings is whether the quality provisions of Opinion No. 468 as amended by Opinion No. 468–A are applicable to the residue gas or whether the quality provisions are applicable at the wellhead, as the respondents and El Paso contend.

In Opinion No. 468–A, we commented at page 1070 therein on the application of the Btu adjustment for flowing gas as follows:

> The Btu adjustment will be applied to the area base rate before price adjustments for quality. In view of the fact that a majority of contracts for gas-well gas provide for a payment for liquids removed by the purchaser, Btu content should be measured after the removal of such liquids where such payment is made.[2] To measure Btu's prior to extraction of the liquids and then pay a bonus for high Btu content in the form of liquids would be a double payment.

[2] The same principle would also apply in the case of similar contracts for residue or casinghead gas.

Respondents, in effect, argue that "where such payment is made" would appear to imply that where the producer does not share in the liquids, the Btu adjustments should be applied at the wellhead and treating costs should be absorbed by the seller by deducting them from the area base rate. In making the aforementioned statement, we were referring to the point of Btu adjustment when a producer sold the wet stream to the pipeline and was paid for this wet stream on the basis of wellhead volumes. Where, as herein involved, the producer is paid on the basis of residue volumes, we do not believe that there is justification for determining the Btu adjustment at different points (at the wellhead or at the tailgate) depending on whether or not the producer is entitled under its contract to share in the liquid revenue. The proper point for determining the quality of the gas in the present cases is thus the tailgate of the plant.

For the foregoing reasons, we shall reject the respondents' quality statements and shall direct the filing of quality statements consistent with the foregoing discussion. Consistent therewith we shall suspend the subject notices of change as hereinafter provided. If respondents file quality statements which will support the rates sought here the suspension proceedings shall be terminated as of the date of filing satisfactory quality statements.

The Commission orders:

(A) The quality statements tendered for filing on January 3, 1966, by General American under its FPC Gas Rate Schedule No. 32 and by Meadows under his FPC Gas Rate Schedule No. 1 are rejected. General American and Meadows shall, within 75 days of the date of issuance of this order, submit a satisfactory quality statement in accordance with the provisions of Opinion Nos. 468 and 468–A.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 6 to General American's FPC Gas Rate Schedule No. 32 and in Supplement No. 3 to Meadows' FPC Gas Rate Schedule No. 1.

(C) Pending such hearing and decision thereon, the aforementioned supplements in paragraph (B), above, are hereby suspended and the use thereof deferred until July 3, 1966, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before March 21, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXACO INC., DOCKET NO. CI65-1365

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FPC GAS RATE SCHEDULE FOR FILING

(Issued February 2, 1966)

On June 25, 1965, Texaco Inc. (Applicant) filed in Docket No. CI65-1365 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corporation (Texas Gas) from the Mound Point and Tiger Shoal Fields, offshore Vermilion Parish, Louisiana, all as more fully set forth in the application.

Applicant originally proposed to sell gas to Texas Gas at initial rates of 19.5 cents per Mcf for gas produced from the Federal Domain and 21.25 cents per Mcf for gas produced from acreage subject to the taxing jurisdiction of the State of Louisiana. Rates are stated at a pressure base of 15.025 psia. On November 8, 1965, Applicant submitted a settlement proposal and agreed to accept a certificate at the initial rates of 19.0 cents per Mcf for gas produced from the Federal Domain and 20.625 cents per Mcf for gas produced from the taxing jurisdiction of the State of Louisiana. There is a downward Btu adjustment from a base of 1,000 Btu's per cubic foot.

The terms of the sale proposed in the application as supplemented by the settlement proposal are as follows:

(1) Reduced initial prices are to be effective during the moratorium which shall be in effect until November 1, 1970, at which time the originally proposed 19.5-cent and 21.25-cent prices would become applicable until January 1, 1972, with periodic increases of 1.0 cent per Mcf each five years thereafter;

(2) 50 percent reimbursement of any increases in existing taxes during the moratorium period and 75 percent reimbursement thereafter;

(3) A gradual increase in daily contract quantities which will reach a maximum of 133,928 Mcf on November 1, 1970;

(4) Take-or-pay obligation for deficient takes during the first five-year period deferred until the end of that period with a subsequent five-year make-up period, and a five-year make-up period for any deficient takes occurring in any given contract year thereafter;

(5) Take or pay for volumes equal to a sum of 70 percent of the daily contract quantities; and

(6) Pipeline quality gas to be delivered onshore through existing facilities at the outlet of Applicant's Erath Processing Plant.

Applicant agrees that its proposal shall be subject to any orders which may be issued in the South Louisiana Area Rate Proceeding, Docket No. AR61-2, *et al.*

The contract between Applicant and Texas Gas will permit Applicant to deliver varying quantities of gas from either the Federal Domain or that area subject to the taxing jurisdiction of the State of Louisiana provided that such deliveries will not result in a weighted average monthly price more than 0.3 cent below or 0.5 cent above the average price determined by the sum of (1) the price of gas from the area of state jurisdiction multiplied by 17 percent and (2) the price of gas from the Federal Domain multiplied by 83 percent. Applicant thereby will be permitted to vary deliveries from the area of state jurisdiction from none to 50 percent of the total monthly deliveries.

Applicant has dedicated "Economically Recoverable Reserves," not to exceed 750 million Mcf of gas, in the Mound Point and Tiger Shoal Fields. All reserves committed in excess of 750 million Mcf, and/or to the extent that the reserves located in the area subject to state jurisdiction exceed 17 percent of the totally committed reserves, shall be considered surplus gas. During the first ten contract years Applicant may substitute, subject to Texas Gas' acquiescence, volumes of gas from some other similar reservoir or reservoirs, and this period of time may be extended for at least three years following the date of final demarcation between the State of Louisiana and the offshore Federal Domain.

The contract provides for a uniformly incremented five-year build-up in contract quantity to a rate of take of 1 to 5,600 as follows:

Contract year ending November 1	*Contract quantity (Mcf per day)*
1966	21, 428
1967	42, 857
1968	64, 286
1969	85, 714
1970	107, 143
Thereafter	133, 928

The minimum daily takes for each contract year are approximately 70 percent of the daily contract quantity. Upon the request of Texas Gas, Applicant will deliver 125 percent of the daily contract quantity if the excess volumes are available and not in excess of regulatory allowables.

After due notice a notice of intervention was filed by the Public Service Commission of the State of New York. Petitions for leave to intervene were filed by the Memphis Light, Gas and Water Division of the City of Memphis, Tennessee, Long Island Lighting Company, Philadelphia Gas Works Division of The United Gas Improvement Company, and Texas Gas. Prior to tne filing of the settlement proposal the City of Memphis advised the Commission that the City would not object to the issuance of a certificate based upon a settlement proposal such as that which was ultimately filed by Applicant and similar to that involved in Docket No. CI64–475 (*Texas Gas Transmission Corporation, et al.*, Docket No. CP64–94, *et al.*, 31 FPC 1125). Subsequent to the filing of the settlement proposal Philadelphia Gas Works Division of The United Gas Improvement Company withdrew its petition because it considers Applicant's project as part of the same transaction involved in Docket No. CI64–475. Long Island Lighting Company has advised the Commission that it has no objection to the issuance of a certificate in light of the settlement proposal. The Public Service Commission of the State of New York has advised the Commission that it will not seek rehearing or judicial review of any order based upon the application as modified by the settlement proposal but that it is not joining in the settlement. Texas Gas' petition is in support of the application. No other notices or petitions to intervene have been received.

Thus, the application is before the Commission in the nature of a settlement concurred in by the Applicant and the staff and without objection from the interveners. While the prices are in excess of the in-line determinations (32 FPC 254) they are below the guideline prices set forth in the Statement of General Policy No. 61–1 and are packaged with other contract provisions more favorable than those usually provided in this area. Accordingly, the application will be granted.

At a hearing held on January 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texaco Inc., is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate issued in paragraph (A) above is granted upon the condition that Applicant comply fully with the terms of this order and the settlement proposal filed herein, which settlement is expressly approved as a part of the application herein.

(C) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) If Applicant desires to deliver natural gas from reservoirs other than those specifically referred to herein, it shall advise the Commission of the names and locations of said reservoirs and request approval for such deliveries.

(E) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or which hereafter may be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of said contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of sales of natural gas subject to said certificate.

(F) The contract dated June 4, 1965, between Applicant and Texas Gas is accepted for filing to be effective on the date of initial delivery and is designated as Texaco Inc. FPC Gas Rate Schedule No. 362. Applicant shall file three copies of its settlement proposal as a supplemental to said rate schedule.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. G-20464, ET AL.; COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP63-344 (PHASE II)

ORDER AMENDING OPINION AND ORDER

(Issued February 2, 1966)

On January 3, 1966, Colorado Interstate Gas Company (Colorado Interstate) filed a motion to amend and clarify the Commission's Opinion No. 472, issued on August 31, 1965, in the above-captioned proceeding, 34 FPC 659. Colorado Interstate seeks to make it clear that in addition to authorizing the abandonment of Colorado Interstate's 20-inch line from Colorado Springs to Denver, Colorado, paragraph (C) of the order accompanying Opinion No. 472 also authorizes the retirement of Colorado Interstate's 3,200 horsepower McClintock compressor station located on said line near Colorado Springs. Colorado Interstate correctly avers that it was the intention of the order to authorize the abandonment of the said compressor station. No opposition to the motion has been filed.

The Commission finds:

It is in the public interest and appropriate to carry out the provisions of the Natural Gas Act to amend the aforesaid Opinion No. 472, as provided by this order.

The Commission orders:

Paragraph (C) of the order accompanying the Commission's Opinion No. 472, issued on August 31, 1965, in the above-captioned proceeding, 34 FPC at 667, is hereby amended to read as follows:

> (C) Colorado Interstate's application for authorization to abandon its Colorado Springs to Denver 20-inch line and to construct and operate a replacement therefor; to retire its McClintock compressor station consisting of 3,200 horsepower; and to construct and operate additional compressor facilities required to complete its Rocky Mountain expansion program, all as proposed in its application herein, is granted. In all other respects the application by Colorado Interstate in Docket No. CP63–344 (Phase Two) is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO ELECTRIC COMPANY, DOCKET NO. E–7258

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued February 4, 1966)

El Paso Electric Company (Applicant), a Texas corporation, qualified to transact business in the State of New Mexico with it principal place of business at El Paso, Texas, filed an application with the Federal Power Commission pursuant to Section 204 of the Federal Power Act seeking authority to issue promissory notes up to and not exceeding at any one time the aggregate principal amount of $12,000,000.

Applicant proposes to issue up to but not exceeding $12,000,000 promissory notes, payable to such bank or banks from which the Applicant may borrow the funds. The notes are to be issued for a period not exceeding 12 months from the date of original issue or renewal thereof, and such notes, issued either originally or upon renewal from time to time, will have maturity dates not later than December 31, 1968. The notes are to bear interest at a rate per annum not in excess of one-quarter of 1% over the New York City prime rate in effect at the time of borrowing.

According to the application the notes are to be issued to furnish a portion of the funds needed for the Applicant's construction program which has an estimated cost of $5,628,000 in 1966, $9,030,600 in 1967, and $11,104,800 in 1968. In order to carry out its commitment to the "Western Energy Supply and Transmission Associates", a group of 17 utilities in a nine-state area. Applicant proposes to join in the installation of 1500 mw of generating capacity in the Navaho plant and to construct 202 miles of 345 kv transmission line to interconnect with Public Service Company of New Mexico. The Applicant's 1966 construction program includes $202,000 for these generating facilities, its 1967 construction program includes $1,793,000 for these generating facilities and $3,650,000 for these transmission facilities, and its 1968 construction program includes $4,040,000 for these generating facilities and $3,650,000 for these transmission facilities.

Written notice of the application has been given to the El Paso Electric Company, Texas Railroad Commission and the New Mexico Public Service Commission. Notice was also published in the Federal Register on December 8, 1965 (30 F.R. 15186), stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1965 file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 14, 1958, *El Paso Electric Company*, Docket No. E-6828 (20 FPC 30).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said notes being not later than December 31, 1968.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-92

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1966)

On November 15, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP61-92 an application to amend the order of the Commission issued in said docket January 11, 1965, 33 FPC 34, which order authorized Applicant to construct and operate certain facilities and to deliver natural gas to Northern Natural Gas Company (Northern), on an exchange basis, at points in Ochiltree County, Texas, as a part of the previously authorized exchange under Applicant's Rate Schedule Z-1, FPC Gas Tariff, Third Revised Volume No. 2. By the instant filing, Applicant requests the further amendment of the certificate to authorize the construction and operation of approximately 0.25 mile of 4½-inch O.D. pipeline and a measuring and regulating station which are necessary to connect a recently developed well in Ochiltree County, Texas, all as more fully set forth in the application to amend.

Applicant states that it now has additional quantities of gas available for delivery to Northern which are to be produced from the well denominated as Buzzard No. 1. Northern and Applicant have agreed, by letter agreement dated August 17, 1965, to supplement Exhibit B to Applicant's Rate Schedule Z-1, FPC Gas Tariff, Third Revised Volume No. 2, by addition of the aforementioned well. This agreement provides for delivery by Applicant to Northern, on an exchange basis under Rate Schedule Z-1, of natural gas attributable to Applicant's interest in such well.

The estimated cost of the facilities to be constructed is $6,900, which cost is to be financed from working funds.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 13, 1965 (30 F.R. 14822). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 11, 1965, in Docket No. CP61-92 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 11, 1965, in Docket No. CP61-92 is amended so as to authorize the construction and operation of approximately 0.25 mile of 4½-inch O.D. pipeline extending from the Buzzard No. 1 well located in the SW/4 of Section 59, Block 13, T&NO Rd. Survey, Ochiltree County, Texas, to a point of connection with Applicant's existing facilities interconnecting with Northern Natural Gas Company's system in the SE/4 of Section 57, Block 13, of Ochiltree County, Texas.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TOWN OF MIDDLEBOROUGH, MASSACHUSETTS AND ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP66-68

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 4, 1966)

On September 3, 1965, the Town of Middleborough, Massachusetts (Applicant) filed in Docket No. CP66-68 an application, as supplemented on October 1, October 8, and December 9, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Algonquin Gas Transmission Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in Middleborough and environs, as more fully set forth in the application.

Applicant proposes to construct and operate approximately four miles of 8-inch transmission pipeline from the proposed interconnection with Respondent's transmission pipeline southeast of Middleborough, together with certain additions to its existing distribution system in order to serve future increased loads.

Applicant's estimated natural gas requirements, to be purchased under Respondent's Rate Schedules F-1 and I-1, are as follows:

	First year	*Second year*	*Third year*
Annual (Mcf)	221, 147	251, 226	225, 587
Peak day (Mcf)	745	767	790

The natural gas presently used by Applicant is purchased from the Brockton Taunton Gas Company (Brockton) and is delivered through a 39-year-old 6-inch main under an existing contract dated June 20, 1955, subject to termination upon 2 years' notice. The contract between Brockton and Applicant will expire on August 31, 1966.

Applicant also transports gas through its existing distribution system for Brockton for distribution in the Town of Lakeville, Massachusetts. Applicant and Brockton have entered into a gas service agreement dated December 8, 1965, whereby Applicant will sell and deliver, for the account of Brockton, all of Lakeville's gas requirements.

Applicant proposes to purchase all of its present and future natural gas requirements directly from Respondent and will, from the proposed additions to its present distribution system, include service to a large new industrial customer, the Kelsey Ferguson Brick Company. This industrial customer, a new brickyard, has executed a letter of intent, to Applicant, indicating that agreement has been reached with Applicant on all items of the proposed service except the charge for gas conversion adjustment and the exact volume, between 300 Mcf and 400 Mcf, to be used for firm maximum daily requirements.

The estimated total cost of the facilities to be constructed by Applicant is $410,352, which will be financed with funds on hand and funds from the issuance of $200,000 in 10-year bonds. The project is economically feasible.

Respondent was notified of the filing of the application by letter dated September 8, 1965. Respondent indicated by letter filed September 24, 1965, that it has no objection to rendering the service proposed by Applicant.

Due notice of the filing of the application was published in the Federal Register on September 21, 1965 (30 F.R. 12052). Brockton filed a letter on October 7, 1965, asking the Commission to condition its authorization by requiring Applicant to continue to provide the Lakeville transportation service for Brockton. As indicated above, Applicant has so agreed by its contract with Brockton dated December 8, 1965. No other protests, petitions to intervene or notices of intervention have been filed.

The Commission finds:

(1) Algonquin Gas Transmission Company, a Delaware corporation with its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in the order accompanying Opinion No. 206, issued February 26, 1951, in Docket No. G–1319 (10 FPC 35).

(2) Applicant is a municipality in the State of Massachusetts and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 790 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 790 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

VILLAGE OF THEBES, ILLINOIS AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66–146

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 4, 1966)

On November 10, 1965, the Village of Thebes, Illinois (Applicant) filed in Docket No. CP66–146 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in Thebes, as more fully set forth in the application.

Applicant proposes to interconnect a lateral line with the facilities of Respondent at a point approximately three miles north of Thebes. From this point of connection Applicant proposes to construct a 2-inch high pressure lateral extending southward along Illinois State Route No. 3 to the town border station to be located at the northeast side of Thebes. Applicant also proposes to construct a complete distribution system to serve all prospective customers in Thebes, its vicinity, and along the proposed lateral line. The project appears economically feasible.

Estimated peak day and annual volumes required by Applicant are stated to be:

	First year	*Second year*	*Third year*
Annual (Mcf)	12, 772	16, 774	20, 895
Peak day (Mcf)	176	230	284

Total estimated cost of Applicant's proposed distribution system is $100,000, which cost will be financed through the issuance of gas revenue certificates pursuant to an agreement between Applicant and Midwest Securities Co.

On December 13, 1965, Respondent filed an answer to the application filed by Applicant in this proceeding stating it would render the requested service on order of the Commission favorably determining the merits of the application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on November 25, 1965 (30 F.R. 14696). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Texas Eastern Transmission Corporation a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 11, 1947, in Docket No. G-880 (6 FPC 171).

(2) Applicant, Village of Thebes, Illinois, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Texas Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations, up to 284 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant, as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Thebes, Illinois, environs, and along said lateral within one year from the date of the issuance of this order.

The Commission orders:

(A) Texas Eastern Transmission Corporation is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 284 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in the proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EDWARD O. BOSHELL, DOCKET NO. ID-1107

ORDER DISMISSING ORDER TO SHOW CAUSE

(Issued February 7, 1966)

By order issued October 18, 1965, 34 FPC 1166, Edward O. Boshell was ordered to show cause why the Commission should not find and determine that the continued authorization pursuant to Section 305(b) of the Federal Power Act to hold the positions of Director and Chairman of the Executive Committee of Duquesne Light Company and Director of Westinghouse Electric Corporation would be adverse to public or private interest.

The Commission has considered the answer and further showing made by the Respondent on November 5, 1965 and January 12, 1966, respectively. These pleadings indicate that, upon expiration of his term of office as a Director of Westinghouse Electric Corporation in April, 1968, Respondent will not be a candidate for re-election. In view of this fact, further proceedings in this docket are unnecessary and we conclude that the show cause order should be dismissed.

The Commission orders:

The order to show cause issued October 18, 1965 is hereby dismissed.

OPINION NO. 480-A

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-150; OKLAHOMA NATURAL GAS COMPANY, DOCKET NO. CP64-273; OKLAHOMA NATURAL GAS STORAGE COMPANY, DOCKET NO. CP64-273

OPINION AND ORDER ON REHEARING

(Issued February 7, 1966)

Syllabus

Upon rehearing, Commission *modifies* prior order to provide that gas storage transaction would not be jurisdictional if storage company depletes its Sayre storage balance to 6,000,000 Mcf within four years after initial five year period; in all other respects prior opinion and order is confirmed.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

Oklahoma Natural Gas Company (Oklahoma Natural) and Oklahoma Natural Gas Storage Company (Storage) on November 24, 1965, and Natural Gas Pipeline Company of America (Natural) on December 6, 1965, filed applications for rehearing in the above entitled proceeding. On December 23, 1965, we granted rehearing for purposes of further consideration.

In our Opinion No. 480 and order, 34 FPC 1258, we granted Natural a certificate to lease from Storage the Sayre underground storage field located in Beckham County, Oklahoma, for a period of 40 years. We also found that the mere sharing of a storage facility would subject neither of the parties to the jurisdiction of this Commission. However, the Commission noted that the instant transaction could involve a sale of gas for resale in interstate commerce within the intendment of the Natural Gas Act, to the extent that Storage delivered gas to Natural via the Sayre Field, albeit classified as cushion gas, and was paid therefore by Natural. Storage had indicated that it planned to inject and withdraw approximately 1,100,000 Mcf annually. The cushion gas attributable to this use of Sayre is 6,000,000 Mcf. Thus, we found that any gas, in addition to the 6,000,000 Mcf needed as cushion for Storage's use of the field, which Storage delivered to Natural and was paid therefor, was a sale of gas under our jurisdiction.

The application for rehearing filed by Storage contains an affidavit by Mr. C. C. Ingram, Vice President of Storage, which indicates that Storage intends to store up to 25,000,000 Mcf in Sayre, the maximum provided by the contract, for the entire term of the agreement. According to the affidavit, Oklahoma Natural intends to use this field capacity as a "bank" in order to conserve "distress" gasoline plant and casinghead gas which must be taken as produced regardless of market demand, or else vented or flared. In this respect, the affidavit further indicates that Oklahoma Natural must often contract to take larger volumes of gas or at faster rates than its markets require, and that the extra volumes are placed in storage to be withdrawn as needed. On that basis, both Storage and Natural contend that the agreement would not involve a transaction under our jurisdiction.

The parties have misinterpreted our opinion. In actuality, the affidavit for the first time makes clear that Storage would be transferring gas at Sayre to Natural which would "bank" the gas and redeliver it at some later time. In our opinion, such an operation would constitute an exchange of gas, which we have always construed as a sale (see Opinion No. 480, 34 FPC at 1263–1264). Under the rationale of *Lo-Vaca*,[1] this exchange, or sale, is one for resale in interstate commerce.

In other words, this is *not* merely an arrangement for joint use of storage facilities in which Natural is paying Storage, the present owner of the field, either a flat rental fee or a fee calculated on the basis of the amount of storage space made available to it. On the contrary, the more gas Storage transfers to Natural at Sayre, the more Natural will pay. Natural is obviously not paying additional amounts for the privilege of using storage space in the Sayre Field. Instead, it is paying the additional sums because of the use it makes of gas Storage is inserting into the field for Natural's purposes. As we said in our original opinion, this arrangement by which Storage would be compensated by Natural for amounts in excess of gas needed as cushion for Storage's intended use would constitute a sale of gas to Natural in interstate commerce within the meaning of Sections 1(b) and 7(c) of the Natural Gas Act.

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[1] *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366.

The parties emphasize that their proposed use of Sayre is economical and in all ways consistent with the public interest. This we do not doubt. The issue, however, is simply whether the transaction could be one governed by the Natural Gas Act, irrespective of the public benefits it offers.

Natural and Storage also argue that since their contract requires Storage to maintain 18,000,000 Mcf in the field during the first five years of operation, it would be impossible to reduce Storage's balance to 6,000,000 Mcf in the sixth year. In our opinion, this is a valid point. We shall therefore modify our order to provide that the transaction would not be jurisdictional provided that Storage depletes its storage balance in Sayre to 6,000,000 Mcf within four years after the initial five year period during which Storage is obliged to maintain a minimum of 18,000,000 Mcf.[3]

The Commission further finds:

The assignments of error and grounds for rehearing advanced by Natural and by Oklahoma Natural and Storage present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 480 and accompanying order, except as supplemented by the discussion above, and included below.

The Commission orders:

The applications for rehearing filed by Natural, Oklahoma Natural, and Storage, although granted for purpose of further consideration, are now denied, and the Commission's Opinion No. 480 and accompanying order are confirmed as the opinion and order of the Commission in this proceeding as supplemented by this order; with the exception that the proviso section of paragraph (C) of said order is modified as follows: "* * * provided that petitioners, beginning in the sixth year of operations under the agreement, deplete the volume of gas stored in Sayre to their account by 3,000,000 Mcf per year so that, by the end of the ninth year of operation, they do not maintain in excess of 6,000,000 Mcf of gas in the Sayre Field for which additional amounts of gas, petitioners or either of them are directly or indirectly compensated by Natural.

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[3] Under the agreement, Storage may withdraw 3,000,000 Mcf annually from Sayre, hence could withdraw 12,000,000 Mcf within the four year period.

OPINION NO. 486

THE MONTANA POWER COMPANY, DOCKET NOS. G-17370, G-17371

OPINION AND ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued February 8, 1966)*

1. It is neither proper nor necessary to go beyond the Natural Gas Act in determining issues here. PP. 194; 204.
2. Intervenor's objections do not warrant denial of application; it is conceded that volume of imports is *de minimis* and "standing alone" imports afford little basis for expressions of alarm as to national security or health of domestic petroleum industry. P. 196.

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*Initial decision appears on p. 197. Rehearing denied by order issued April 5, 1966, 35 FPC 473.

3. Assumption that denial of application will compel search for and discovery of new domestic gas and oil wells has not been established. PP. 196; 205.
4 Assertion that Commission is acting here without administrative standards or appropriate policy guidelines is without merit. P. 196.
5. Standards and guidelines expressed in prior decisions were applied to facts here and found affirmatively satisfied. P. 196.
6. Where existing Permit sufficiently provides for proposed additional imports no amendment or additional Permit is required. P. 206.
7. In a proceeding arising under Section 3 of the Natural Gas Act and Executive Order No. 10485, Commission *authorizes* importation of additional volumes of gas and *denies* motion for oral argument.

William H. Coldiron for The Montana Power Company

William I. Powell and *Frank X. Jordan* for Independent Petroleum Association of America

David S. Lichtenstein for the Staff of the Federal Power Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BAGGE, *Commissioner:*

This proceeding involves two applications filed on January 25, 1965, by The Montana Power Company (Montana Power) requesting first, in Docket No. G–17371, an order under Section 3 of the Natural Gas Act for authorization to import natural gas at an average daily rate of 20,000 Mcf (in addition to its presently authorized imports at an average daily rate of 30,000 Mcf) from Alberta, Canada, into the State of Montana; and second, in Docket No. G–17370, an amendment to its Presidential Permit under Executive Order No. 10485, making possible the importation of the increased quantities of gas.

The Independent Petroleum Association of America (IPAA or Intervener) participated in this proceeding pursuant to Commission order issued May 14, 1965. IPAA opposed the applications, alleging that the requested imports would have the effect of foreclosing substantial markets to domestic gas or oil supplies, and therefore would be in conflict with the purpose of the Mandatory Oil Import Program.[1]

By stipulation of the parties, the case was submitted on the basis of prepared written testimony and briefs without cross-examination of the witnesses for Montana Power. On October 18, 1965, *infra*, p. 197, Presiding Examiner Ewing G. Simpson issued an initial decision in which he ordered that authorization be granted to Montana Power to import from Canada the proposed additional volumes of natural gas. He found that Montana Power had established a need for this importation, and that such importation would not be inconsistent with the public interest. The examiner also found that the existing Presidential Permit sufficiently provided for the additional proposed imports and that no amendment or additional permit was required.

The proceeding is before the Commission on the examiner's decision, exceptions filed by IPAA, and answers to these exceptions. The basic issue presented is whether Montana Power's application for an order under Section 3 of the Natural Gas Act for the importation of gas from Canada should be denied.

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[1] The Mandatory Oil Import Program was established by Presidential Proclamation No. 3279, dated March 10, 1959, after the Director of the Office of Civil and Defense Mobilization advised the President that imports of crude oil and its products and derivatives were threatening to impair the national security. The policy of the Mandatory Oil Import Program was to limit petroleum imports into the United States from foreign countries. In issuing the Proclamation, President Eisenhower stated: "The new program is designed to insure a stable, healthy industry in the United States capable of exploring for and developing new hemisphere reserves to replace those being depleted."

IPAA has filed a motion for oral argment and has asked that this argument be heard together with oral argument in the *Pacific Gas Transmission Company* proceedings, Docket No. CP65–213, *et al.*, asserting that these two proceedings involve similar issues. The issues in this proceeding have been adequately covered in the briefs and exceptions. Oral argument would contribute little which has not already been presented. The motion for oral argument will accordingly be denied.

Background

Montana Power, a corporation organized under State of Montana law, is engaged in the production, transmission and distribution of natural gas wholly within that state. Montana Power furnishes gas to the Cities of Butte, Anaconda, and Bozeman, as well as to areas in southwestern and south-central Montana. The system directly serves 74,300 retail users and furnishes gas to three other utilities which serve an additional 20,600 users.

Montana Power entered the gas business in 1931, at which time it secured its entire gas supply from fields in Montana. Late in the 1940's the applicant's searches for additional gas supplies in Montana and adjacent areas proved fruitless, and Montana Power then turned to Alberta, Canada, as the closest most economic source of supply. With Commission authorization,[2] Montana Power began to import Canadian gas in 1952. The Commission granted the applicant additional authorizations for such imports in 1955[3] and in 1960[4] upon the applicant's showing of the decline of its domestic reserves and its inability to discover new domestic supplies within feasible transmission distance.

In this proceeding Montana Power seeks to amend the Commission's 1960 order so as to increase the amount of gas to be imported by an average of 10,000 Mcf per day commencing November 1, 1966, and by an additional average of 10,000 Mcf commencing on or about November 1, 1967, but not to exceed, along with related imports presently authorized 60,000 Mcf in any one day.

The gas will be purchased in Canada from Alberta producers by Alberta and Southern Gas Company Ltd. (Alberta and Southern). It will be delivered by the latter to The Alberta Gas Trunk Line Company Ltd. (Trunk Line) for transportation to a point four miles north of the Montana-Alberta border. There the gas will be sold and delivered to Canadian-Montana Pipe Line Company (Canadian-Montana), a subsidiary of Montana Power engaged in the transportation of gas in Canada. The facilities now owned and used by Canadian-Montana and Montana Power in the importation of 30,000 Mcf per day will be used for the proposed imports, without additions. Montana Power has estimated that its cost for the proposed imports for the year 1968 will be 22.09 cents per Mcf (14.73 psia) delivered at the border.

In support of its application, Montana Power submitted estimates showing that its system total loads will increase from an actual 45,041,000 Mcf in

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[2] *The Montana Power Company,* Docket No. G–1712, *et al.,* 1952, 11 FPC 1.

[3] *The Montana Power Company,* Docket No. G–2805, *et al.,* 1955, 14 FPC 227.

[4] *Pacific Gas Transmission Co., et al.,* Docket No. G–17350, *et al.,* 1960, 24 FPC 134. In this order the Commission authorized Montana Power to import an average quantity of 30,000 Mcf of gas per day, to a maximum of 36,000 Mcf per day and 10,950,000 Mcf per year, from western Alberta, and granted Montana Power a permit to construct, operate, maintain and connect facilities for this importation near Babb, Montana.

1964 to an estimated 55,518,000 Mcf in 1970. Montana Power calculated that its available supplies in the United States together with its contracted and proposed purchases from Alberta, including the gas which is the subject of this proceeding, will suffice to meet its needs only through 1968 and that by 1970 its requirements will exceed its supplies by an estimated 9,312,000 Mcf. The applicant further stated that it has not abandoned its exploration program for discovering domestic sources of natural gas, but that this program has not met with success, and that it must obtain gas from Canada in order to avoid the curtailment of deliveries and the denial of service to its prospective customers.

Montana Power's allegations as to its needed requirements of gas and its available resources were not disputed by the other parties. The ability of Alberta and Southern to obtain the volumes of gas contracted to Montana Power was stipulated. Official Canadian approval permitting the export of the gas has been obtained.[5]

IPAA's Objections

IPAA, a national trade organization representing more than 6,000 oil and natural gas producers, did not attack or attempt to refute Montana Power's presentation as to its need for the requested imports of gas. Intervener advocated, however, that the Commission should establish a policy whereby the approval of imports of natural gas would be correlated with the oil import restrictions of the Mandatory Oil Import Program. Intervener stated that it was not trying to keep Montana Power from getting something which it needed and could not get elsewhere, but was simply attempting to inform the Commission that growing imports of crude oil and natural gas liquids were having a "dampening" effect on the domestic oil industry. The essence of Intervener's case was summarized in its Initial Brief at page 19:

> Standing alone the additional volumes of foreign natural gas sought by applicant may not be sufficient to thwart or endanger this Nation's policy to limit imports in the interest of our national security. However, when added to that already being imported, other import applications now pending and still others certain to come, it can easily be seen that such increasing imports will pose a serious threat to the domestic petroleum producing industry and thus to our Nation's security.

Montana Power attacked Intervener's objections, stating that these were founded upon the fallacies of assuming that the problems of the oil and natural gas industries were identical and that the imported gas would supplant domestic production. Montana Power asserted that the policies of the Mandatory Oil Import Program are not applicable to the natural gas industry and pointed out that no domestic gas supplies would be supplanted by the imports, since its own discovery efforts in the areas near Montana had proved fruitless. Staff corroborated this statement as to the absence of an economic domestic source of gas and added that it might not be in the national security interest to foreclose needed imports of gas, forcing the consumption of domestic reserves at the fastest possible rate at the highest possible price.

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[5] Alberta and Southern has secured a permit (No. AS64-3) from the Alberta Oil and Gas Conservation Board, approved by the Lieutenant Governor in Council (O.C. 1941/64), authorizing the removal of the gas involved during the term ending October 31, 1989. Montana Power has also filed a certified copy of the license issued to Canadian-Montana by the National Energy Board of Canada (No. GL-17), approved by order in Council (P.C. 1486), authorizing the exportation.

The Examiner's Initial Decision

The examiner proposed in his initial decision that authorization be granted to Montana Power to enable it to import its requested volumes of gas. The examiner found that these imports would not be inconsistent with the public interest, and he found no support of record fact for Intervener's contention that this authorization would be contrary to the national policy.

With respect to Intervener's argument that imports of gas serve to supplant domestic petroleum products, the examiner concluded that this argument was essentially the displacement-of-fuels objection raised by coal, oil and related interests in earlier proceedings before the Commission. He pointed out that it had been generally held that the interests of competing fuels would be considered along with those of all others,[6] but that the authorization for gas would be granted where it appeared that preponderant advantages would attend its use, or that an overbalancing public benefit would result.[7] The examiner found that, measured by these standards, Montana Power's proposal merited approval, particularly in view of the applicant's inability to solve in any other way its problem of dwindling reserves.

IPAA's Exceptions To The Examiner's Initial Decision

IPAA's exceptions to the examiner's decision recite seven alleged errors, all relating to the examiner's refusal to find that the denial of Montana Power's application was required by operation of the Mandatory Oil Import Program. Intervener contended that the examiner erred (1) in not going beyond the Natural Gas Act and in not taking cognizance of the Mandatory Oil Import Program; (2) in not taking judicial notice of such Import Program; (3) in failing to consider national security problems arising from U.S. consumer dependency on foreign supplies; (4) in finding that the proposed imports would not adversely affect the incentive to explore for and develop domestic reserves; (5) in finding that the proposed imports would not endanger the national policy of limiting oil imports; (6) in not considering the national security implications of this proceeding; and (7) in not considering the long-term interest of the applicant's customers.

We find that Intervener's exceptions are not persuasive and, indeed, are not factually accurate. As to exceptions (1) and (2), the examiner's decision shows that he took full cognizance and judicial notice of the Mandatory Import Program in arriving at his findings.[8] Furthermore, contrary to exceptions (3), (5), (6), and (7), he gave adequate consideration to the questions of national security and long-term consumer interest. And finally, with respect to exception 4, the examiner had ample basis for finding that the applicant's proposed imports would not adversely affect the incentive to explore for and develop domestic reserves.[9]

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[6] *American Louisiana Pipe Line Co., et al.* (G–2306, *et al.*, 1958), 20 FPC 575, 608, 609.

[7] *Southern Natural Gas Co.* (G–14740, 1962), 28 FPC 283; *Coastal Transmission Corp., et al.* (G–18338, *et al.*, 1961), 26 FPC 318, 325.

[8] The examiner pointed out (*infra*, pp. 202, 203) that during the period when the oil import program was being formulated, natural gas received infrequent mention, and only in general terms, with no indication that natural gas had any association, potential or otherwise, with the matters under consideration.

[9] The examiner noted (*infra*, p. 204) that natural gas imported from Canada is currently averaging some 2.48 percent of domestic market production, and is transmitted to twelve states by pipe lines, after various approvals by the Commission based upon a demonstrated public need. He observed (*infra*, p. 203) that consideration of the matters mentioned in the FPC Annual Reports to Congress did not give any indication that imports of gas confronted domestic oil and gas exploration and development programs with an emergency.

Section 3 of the Natural Gas Act provides that the Commission shall, upon application, issue an order for importing natural gas from a foreign country, unless, after opportunity for hearing, it finds that the proposed importation will not be consistent with the public interest. In this proceeding Montana Power has made a convincing *prima facie* showing of its need for the requested imports, of its inability to discover new accessible domestic gas fields, and of the practicability of piping the Alberta gas into Montana. Intervener has not refuted Montana Power's showing of need, nor has it been able to demonstrate that domestic sources of gas are readily available to supplement Montana Power's dwindling reserves. The urgency of the applicant's position assumes particular significance in light of the fact that part of the gas to be imported will be used to replace gas which was formerly purchased from Montana-Dakota Utilities, but which is no longer available,[10] and also in light of the fact that Montana Power's industrial customers include mining and metal processing interests of importance to the national security.

Intervener's objections do not warrant the denial of Montana Power's application. Indeed, IPAA conceded that the volume of imports involved in this proceeding is *de minimis* and that Montana Power's proposed imports "standing alone" afford little basis for Intervener's expressions of alarm as to the national security or the health of the domestic petroleum industry. To the extent that Intervener's case is based upon its assumption that the denial of Montana Power's application will compel the search for and discovery of new domestic gas and oil wells, Intervener has not established its case.

Intervener asserted that the Commission is acting without administrative standards or appropriate policy guidelines in ruling upon applications for the importation of Canadian natural gas. We find that this argument is without merit. The Commission's standards and guidelines in proceedings of this type have been enunciated repeatedly in *Northwest Natural Gas Company, et al.*, G-966, *et al.*, 13 FPC 221, 235 (1954); in *American Louisiana Pipe Line Company, et al.*, G-2306, *et al.*, 20 FPC 575, 591 (1958); and in *Pacific Gas Transmission Company, et al.*, G-17350, *et al.*, 24 FPC 134, 135 (1960). The Commission's concern for the protection of the consuming public, the adequacy of the available supply of gas, and the effect of the importation of gas upon national security and national welfare has been plainly expressed in the above decisions. We have applied these standards and guidelines to the facts of this case, and we affirmatively find that they are here satisfied.

We accordingly approve and adopt the examiner's findings and conclusions with respect to Montana Power's application, to the extent not inconsistent with the foregoing discussion.

The Commission further finds:

(1) The Montana Power Company is a "person" within the meaning of Section 2(1) and Section 3 of the Natural Gas Act.

(2) The Montana Power Company owns and operates a natural gas production gathering, transmission and distribution system in the State of Montana for the sale of natural gas for ultimate public consumption within that State; its rates for natural gas service are regulated by the Public Service Commission of Montana; and the gas which it proposes to receive from Canadian-Montana Pipe Line Company at the international border will be used solely in Montana.

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[10] The Commission authorized Montana-Dakota to abandon its sales to Montana Power effective January 1, 1965, by order issued November 4, 1964, in Docket No. CP65-36, 32 FPC 1271.

(3) The importation of natural gas herein proposed by The Montana Power Company should be authorized subject to the conditions stated in ordering paragraphs below.

(4) The Presidential Permit issued to The Montana Power Company on September 19, 1960, in Docket No. G–17370, which is presently used by The Montana Power Company to import 30,000 Mcf per day day of natural gas as authorized in Docket No. G–17371, from Canada into the United States, sufficiently provides for the additional imports proposed, and no amendment or additional Permit is required.

(5) The exceptions to the examiner's decision should be denied.

The Commission orders:

(A) The Montana Power Company is authorized, subject to the conditions specified herein, to import from Canada into the United States additional gas to an average of 10,000 Mcf per day commencing on or about November 1, 1966, and to an average of 20,000 Mcf per day commencing on or about November 1, 1967, at a point of interconnection on the International Boundary, all as more fully described in the application filed herein in Docket No. G–17371 and the evidence received in these proceedings.

(B) The authorization granted is subject to the applicable terms and conditions of the Commission's order issued to The Montana Power Company in Docket No. G–17371, August 5, 1960 (24 FPC 134).

(C) The examiner's decision, to the extent not inconsistent herewith, is adopted as part of this Opinion and Order.

(D) The exceptions to the examiner's decision are denied.

(E) The motion for opportunity to present oral argument before the Commission is denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION TO AMEND A PRESIDENTIAL PERMIT AND TO AMEND AN ORDER ISSUED UNDER SECTION 3 OF THE NATURAL GAS ACT AUTHORIZING THE IMPORTATION OF NATURAL GAS

(Issued October 18, 1965)

SIMPSON, *Presiding Examiner:* The proceeding arises upon applications filed by The Montana Power Company (Montana Power) under Section 3 of the Natural Gas Act (Act) and Executive Order 10485 dated September 3, 1953 (18 F.R. 5397; 3 CFR, 1949–53 Comp. 970); the former of which provides, in part, to the effect that the Commission shall issue an appropriate order authorizing the importation of natural gas from a foreign country "upon application, unless after opportunity for hearing, it finds that the proposed * * * importation will not be consistent with the public interest," and the latter of which provides in part, that upon a finding of consistency with the public interest, and after obtaining the favorable recommendations of the Secretary of State and Secretary of Defense, the Commission is authorized to issue a permit for the construction, operation, maintenance, or connection at the borders of the United States, of facilities for the importation of natural gas from a foreign country.

Previously, by opinion and order issued August 5, 1960, in *Pacific Gas Transmission Company, et al.*, Docket No. G–17350, *et al.*, 24 FPC 134, the Commission, finding that the importation of gas by Montana Power would not be inconsistent with the public interest (G–17371), and that the construction, operation, and maintenance of facilities for the importation of gas at the border as proposed would be consistent with the public interest (G–17370).

authorized Montana Power, as there provided, to import natural gas from Canada at an average daily rate of 30,000 Mcf (G–17371), and issued a Presidential Permit in relation to facilities which took effect upon favorable recommendations of the Secretary of State and the Secretary of Defense thereon (G–17370).[1]

In this case, on January 25, 1965, Montana Power filed in Docket No. G–17371 an application to amend the above order, issued August 5, 1960,[2] and on the same date filed in Docket No. G–17370 an application to amend the Presidential Permit,[3] requesting authorization to import natural gas at an ultimate average rate of 20,000 Mcf per day in addition to the average daily rate of 30,000 Mcf and permission to maintain and operate the facilities under the Permit for importation of the additional volumes, stating, however, that the construction of additional facilities would not be required.

On February 10, 1965, the Secretary issued Notice of Application; and, within the time therein provided, the Independent Petroleum Association of America (Intervener) filed its petition to intervene; and on April 6, 1965, Montana Power requested a prehearing conference to expedite the hearing.

On May 14, 1965, the Commission issued its order permitting intervention[4] and on May 24, 1965, its further order "Fixing Dates for Pre-hearing Conference and Formal Hearing" wherein it directed that the proposed evidence comprising the several cases in chief be filed and served on or before June 18, 1965; that a prehearing conference be held commencing on June 28, 1965, to determine further procedures and means by which the conduct of the hearing might be facilitated; and that a public hearing on the issues presented be held commencing on July 12, 1965, at the place and time specified.

Thereafter, Montana Power alone having served proposed evidence in chief, these matters came on for prehearing conference and for hearing commencing and concluding, respectively, on the dates directed. At the conference, participants stipulated as to several procedural and substantive matters, and, following the hearing, filed simultaneous main and reply briefs.

THE ISSUES

The basic "public interest" issue in this proceeding arises under the terms of Section 3 of the Act and Executive Order No. 10485, dated September 3, 1953. Section 3 requires that the Commission issue an order in the premises unless it find that the proposed importation will not be consistent with the public interest, and the Executive Order empowers the Commission to issue a permit for operation and maintenance of the related border facilities if it finds the issuance to be consistent with the public interest.[5]

Further, and to the extent the nature of the case requires, certain matters ordinarily considered in certificate proceedings under Section 7 of the Act are proper subjects for consideration in relation to authorizations sought under

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[1] Formally issued September 19, 1960.

[2] Previously amended, November 20, 1961, to authorize Applicant to continue the importation following a corporate merger which included a change in domicile (*The Montana Power Company, et al.,* (Docket No. G–2805, *et al.*) 26 FPC 746).

[3] Previously amended, November 20, 1961, to substitute Applicant as holder of the Permit following a corporate merger, (*Ibid*).

[4] Limited to matters affecting asserted rights and interest set forth in the petition, and providing that the permission did not constitute a recognition that petitioner might be aggrieved by any order entered in the proceeding.

[5] A finding in regard to Section 3 should be effectively dispositive; see, *The Montana Power Company* (Docket No. G–2805, *et al.,* 1955), 14 FPC 227, 229–230.

Section 3.[6] The Intervener in this proceeding raises the sole question whether the Mandatory Oil Import Program, initiated by Presidential Proclamation No. 3279 dated March 10, 1959, does not require the Commission to adopt parallel restrictions with respect to the importation of natural gas or guidelines consistent with the policies of that Program.

THE CONTENTIONS

Montana Power contends that the importation proposed is consistent with the public interest in that it needs the additional supply both to meet the fuel requirements of customers and to maintain reasonable rates; and that failure to find gas in Montana requires that additional gas be secured from Canada.

The Intervener contends that the "public interest" language of Section 3 of the Act is so general as to require that the Commission establish interpretative guidelines with respect thereto; that imports of natural gas are increasing at a rate faster than the increase in domestic natural gas production; that the production of natural gas and liquid petroleum is inseparable and income denied domestic oil and gas producers by increasing imports of natural gas depresses the effort to find and develop new petroleum reserves; and, that it would be contrary to the public interest to approve Applicant's proposal before the establishment by the Commission of a policy governing imports of natural gas which would be consistent with the Mandatory Oil Import Program and the national security. However, Intervener concedes that, in fact and standing alone, the import of these immediate volumes may not endanger the alleged national policy of limiting imports in the interest of national security.

Staff, in general accord with Applicant's contentions, further contends that the record provides no basis, in fact or in law, for a finding that the importation in this case would conflict with the policy of the Mandatory Oil Import Program, and recommends as appropriate in the circumstances and consistent with the public interest, that an order be issued authorizing the importation on condition, however, that the Canadian National Energy Board issue the requisite export authorization.

THE EVIDENCE

Montana Power's Previously Authorized Imports

Montana Power entered the gas business in 1931, constructing a gas transmission line from the Cut Bank Field in northern Montana to the Cities of Butte and Anaconda and southwestern Montana, with provision for service to certain intermediate cities. Prior to 1950 it built a transmission line extending from the Dry Creek Field in south central Montana to the City of Bozeman, and in the latter year interconnected the two lines. The system serves, directly and indirectly, approximately 94,900 users,[7] all within the State, of which some 84,400 are in the residential category.

Montana Power commenced the importation of Canadian gas under an authorization and permit issued by the Commission in 1952, when confronted with a decline in the indicated remaining life of domestic reserves to some 11 years, and an immediate deficiency in deliverability from existing sources sufficiently severe to have imposed a discontinuance of service to Montana Power's largest single industrial user of natural gas, with accompanying disadvantages to the public and detrimental effects to the nation's defense effort of the period. Accordingly, and consistent with the terms of the Canadian authorizations, the Commission authorized the importation of a maximum of 40,000 Mcf per day to a total of 10,000,000 Mcf per year, for the specific use of the industrial customer, for a period ending April 7, 1956.[8]

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[6] See, *The Montana Power Company* (Docket No. G-1712, *et al.*, 1952), 11 FPC 1, 7; *cf., The Montana Power Company,* Docket No. G-2805, *et al.*, 1955) 14 FPC at pp. 237-238.

[7] Directly at retail approximately 74,300 and indirectly through wholesale to three other utilities some 20,600 more.

Thereafter, in order to further and more permanently supplement domestic reserves, and having again been unsuccessful in its search for additional gas in domestic areas within feasible transmission distance of its system, Montana Power sought, by application filed September 17, 1954, to import natural gas from southeastern Alberta, Canada, in an amount equal to 100,000 Mcf per day and 20,000,000 Mcf over any consecutive 12-month period for a period of 20 years.[9] The importation, which was expected to increase life of reserves from some 9 years to an estimated 16 or more years, was authorized for a period ending in 1974.

However, deliveries under this last authorization proved to be less than expected, and on December 30, 1958, Montana Power again filed an application, seeking authorization to import from western Alberta, Canada, additional volumes of natural gas (G–17371), and permission to construct, operate, maintain, and connect facilities therefor at the international boundary (G–17370) near Babb, Montana. Pursuant to subsequent proceedings in these dockets Montana Power was duly authorized to import, as it had requested, an additional average quantity of 30,000 Mcf of gas per day, to a maximum of 36,000 Mcf per day and 10,950,000 Mcf per year, and was granted the permit sought.[10]

The Pending Application

In the immediate application Montana Power seeks to increase the amount of gas to be imported by an average of 10,000 Mcf per day commencing November 1, 1966, and an additional average of 10,000 Mcf commencing on or about November 1, 1967, but not to exceed, along with related imports presently authorized, 60,000 Mcf in any one day.

As in the prior proceedings (G–17370 and G–17371) the additional gas will be first purchased in Canada by Alberta and Southern Gas Company, Ltd. (Alberta & Southern), from producers in various Alberta fields, and will be delivered by the latter to The Alberta Gas Trunk Line Company, Ltd. (Trunk Line), for transportation to a point some 4 miles north of the Montana-Alberta border, where it will be sold and delivered to Canadian-Montana Pipe Line Company (Canadian-Montana),[11] a subsidiary of Montana Power engaged in the transportation of gas in Canada. Facilities presently owned and used by Canadian-Montana and Montana Power in the transportation and importation of the 30,000 Mcf per day, would be used for the proposed additional imports, without additions.

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[8] *The Montana Power Company* (G–1712, *et al.*, 1951) 11 FPC 1.

[9] *The Montana Power Company* (G–2805, *et al.*, 1955) 14 FPC 227; also filing on the same date for a permit to operate and maintain existing facilities for the importation proposed in the new proceedings. Volumes stated on a pressure base of 14.4 psia.

[10] *Pacific Gas Transmission Co., et al.* (G–17350, *et al.*, 1960) 24 FPC 134, a consolidated proceeding including the applications of Montana Power in Docket Nos. G–17370 and G–17371.

[11] Pursuant to a contract and a letter agreement received in evidence herein as Items D and E, respectively. It is estimated that the cost to Montana Power of gas purchased from Alberta and Southern Gas Co., Ltd., for the year 1968, the first year the full quantities of the additional gas requested to be imported will be received, will be 22.09¢ per Mcf (14.73 psia) delivered at the border.

Requirements

Montana Power estimates increases in the requirements of its residential, commercial, and firm industrial customers for the years 1965–1970 at approximately 2½ percent per year; increases for its utility customers either on the basis of past experience or on the utility's estimate of its anticipated growth for the period; and increases for interruptible industrial loads on the basis of known plans of existing customers. Results of these procedures, including an unallocated 750,000 Mcf per year to become available in 1966, indicate system total loads ranging from the actual 45,041,000 Mcf of 1964 to an estimated 55,518,000 Mcf in 1970, as follows:[12]

	1964 (Actual)	1966 (Estimated)	1968 (Estimated)	1970 (Estimated)
	Mcf	*Mcf*	*Mcf*	*Mcf*
Residential	9,830,000	10,253,000	10,882,000	11,446,000
Commercial	6,598,000	6,790,000	7,204,000	7,577,000
Firm industrial	1,328,000	2,045,000	2,133,000	2,212,000
Other utilities	6,708,000	6,997,000	7,458,000	7,939,000
Sub total	24,464,000	26,085,000	27,677,000	29,174,000
Interruptible industrial	19,146,000	22,354,000	23,871,000	25,389,000
Storage—net	379,000	405,000	405,000	405,000
Exchange	606,000			
Sub total	44,595,000	48.844,000	51,953,000	54,968,000
Company use and loss	446,000	488,000	520,000	550,000
System total	45,041,000	49,332,000	52,473,000	55,518,000

Supply

Montana Power estimates its available supply by adding to the estimated production from properties owned by it in the United States and subsidiaries in Canada, the contract quantity to be purchased in Canada from Alberta & Southern, including the additional gas which is the subject of this proceeding. The former relating to fields having a production history and well-established production characteristics, is based upon pressure decline and other field data, as well as company records and deliverability studies of the type in general use in system planning. Estimated supplies, requirements, and deficits for the period 1965–1970 compare, therefore, as follows:[13]

Sources	1964 (Actual) Mcf	1966 (Estimated) Mcf	1968 (Estimated) Mcf	1969 (Estimated) Mcf	1970 (Estimated) Mcf
Canadian	27,878,000	31,452,000	38,142,000	36,920,000	34,676,000
Domestic	17,163,000	17,880,000	14,331,000	13,255,000	11,530,000
Total	45,041,000	49,332,000	52,473,000	50,175,000	46,206,000
Requirements	45,041,000	49,332,000	52,473,000	54,000,000	55,518,000
Deficit				(3,825,000)	(9,312,000)

While Montana Power has not abandoned its exploration program it has not met with success in past endeavors. To avert deficits otherwise anticipated, resulting curtailment of deliveries and denial of service to prospective customers, it is apparent that the foregoing gas requirements have to be met by the purchase of the proposed additional gas from Alberta & Southern.

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[12] To shorten, setting forth estimates only for alternate years, with volumes stated on a base of 14.73 psia.

[13] To shorten, again setting forth estimates only for alternate years but including 1969 as the expected first year of deficit, with volumes stated on a base of 14.73 psia.

It is found, therefore, and is not disputed, that the additional volumes of gas here at issue are necessary to enable Montana Power to meet requirements which are reasonably to be expected within the next several years, and that approval of these proposed imports will serve to benefit both present customers and the economy of the State by providing additional gas for domestic, commercial, and industrial use. It also appears, and is not disputed, that failing to obtain this additional gas Montana Power would be unable adequately to discharge its public utility obligations to present customers or the general public, and that the former would suffer, therefore, either curtailed service or the necessity of costly conversions to more expensive fuels.

The ability of Alberta & Southern to obtain the volumes contracted to Montana Power is stipulated and receives corroborative support in the action of the Canadian authorities in granting the hereinafter referred to approvals permitting the export. The evidence of record also indicates that no difficulty is anticipated in the matter of securing permits for such construction of additional facilities as may be required by Alberta & Southern and Trunk Line.

Permits

Alberta & Southern has secured a permit (No. AS 64–3) from the Alberta Oil and Gas Conservation Board approved by the Lieutenant Governor in Council (O.C. 1941/64) which authorizes removal of the gas here involved during the term ending October 31, 1989, and by letter dated September 1, 1965, Montana Power filed with the Secretary a certified copy of the license issued to Canadian-Montana by the National Energy Board of Canada (No. GL–17), approved by order in Council (P.C. 1486), which authorizes the exploration from Canada.

Intervener's Objections

Intervener seeks to have established in this proceeding a policy applicable to the approval of imports of natural gas which would be correlated with the oil import program restricting imports of petroleum and petroleum products.

Intervener offered no evidence in support of this purpose but refers in its Brief to the White House press release of February 26, 1955, entitled "Report on Energy Supplies and Resources Policy", to "Recommendations to the President of the United States from the President's Special Committee to Investigate Crude Oil Imports" of July 29, 1957, which latter preceded the establishment of the initial voluntary oil import program,[14] and to a number of other items such as the resolution of the Petroleum Industry War Council dated October 24, 1945,[15] recommendations of the National Petroleum Council to the Secretary of Interior dated January 13, 1949,[16] and other government studies and reports which appear to contain certain conclusions as to the importance of petroleum to the national defense, the effect of excess imports upon domestic exploration and development programs, and the decline in domestic well drilling.[17]

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[14] Montana Power and Staff in stipulating to Intervener's reference to the two items did not concede admissibility or weight. The voluntary oil import program was put into effect, apparently, July 1, 1957, and continued until March 10, 1959, when the President, by Proclamation No. 3279 of even date, established the mandatory oil import program, applicable to crude oil and the products and derivatives thereof, which is administered by the Oil Import Administration under the Secretary of Interior.

[15] Declaring it should be the national policy to limit oil imports to quantities required to augment domestic production.

[16] Advising that imports of oil in excess of economic needs above domestic production would retard domestic exploration and oil field development essential to the nation's economic welfare and security.

Intervener concedes that the oil import program was not developed upon the basis of a simple exclusion of imports and only after an exhaustive search by both legislative and executive branches of the Federal government over a period of 15 years for a method of determining a reasonable balance between imports and domestic production, with apparent due regard to the effect which restrictions would have upon relations with foreign countries, and the importance of the development of petroleum reserves in foreign areas by permitting participation of such sources in meeting the growth in domestic demand. No possible result of considering here such broad questions as the foregoing could alter the fact that Montana Power has had to turn to Canadian sources after failure of its own exploration program and that the additional imports for which authorization is here sought, are required for service to its customers as early as 1966.

Intervener's references also indicate that during the period of formulation of the oil import program natural gas received infrequent mention, and, as in the statement of the Secretary of Interior before the House Ways and Means Committee in May 1953, and in the directive of the President to the Advisory Committee on Energy Supplies and Resources Policy in 1954, only in general terms, with no indication that natural gas had any association, potential or otherwise, with the matters then under consideration.[18] Indeed, prior to 1962, imports of natural gas appear to have been relatively negligible in relation to the much larger domestic net production.[19]

Nor does consideration of such matters as are mentioned in the FPC Annual Reports to Congress give any indication that imports of gas confront domestic oil and gas exploration and development programs with an emergency. But rather, these Reports tell of continuing pipeline construction activity, the expansion of distribution facilities into new suburban areas, the general growth of markets,[20] the expansion of commercial and residental uses in parallel with a rapid growth in commercial construction and upward trend in the sales of gas heating equipment and other domestic gas using appliances, as well as an increasing use of gas in important segments of industry.[21]

The Reports do indicate that reserve additions are increasing at a slower rate than the increase in production, but add that there are reasons to believe search for new reserves may succeed in keeping pace with increasing demands and, more to the point, that increased imports may prove a long range supplement to domestic discovery rates and a cover for such deficiencies as may develop therein,[22] a matter given specific consideration by the Commission in decisions authorizing the importation of Canadian gas in *St. Lawrence Gas*

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[17] *Report of Special Committee Investigating Petroleum Resources,* Senate Report No. 9, 79th Cong., 1st Session, stating as the alternative to dependence upon foreign oil, vulnerable to cutoff in time of war, the providing of incentives promoting domestic exploration; report of the Defense Production Administration of January 1953, entitled *Background for Defense, Expanding Our Industrial Might,* calling for an expansion of domestic oil well drilling; and *An Appraisal of the Petroleum Industry of the United States,* January 1965, U.S. Department of Interior, indicating the decline in domestic well drilling over the period 1956–1963 to have been in the order of some 25 percent.

[18] The restrictions of the mandatory oil import program were not applied to Canadian oil until November 20, 1962.

[19] See *National Power Survey,* Part II, p. 325 (1964).

[20] Annual Report (1964), p. 118.

[21] *Ibid,* p. 114.

[22] *Ibid,* p. 116.

Company, Inc., et al., (G–17500, *et al.*, 1961) 26 FPC 265, 268,[23] and Montana Power's earlier proceedings in Docket Nos. G–2805 and G–2806.[24]

Natural gas imported from Canada, averaging some 2.48 percent of domestic market production, is transmitted to some twelve states[25] by pipe lines, including Midwestern Gas Transmission Company,[26] El Paso Natural Gas Company,[27] The Montana Power Company,[28] St. Lawrence Gas Company, Inc.,[29] and Tennessee Gas Transmission Company,[30] after various approvals by the Commission based upon a demonstrated public need. While the Annual reports[31] and Commission decisions[32] indicate the existence of geological conditions which appear to afford a basis for indicating a future finding of larger reserves in Canada, there is nothing in this record that requires rendering a decision upon the premise that this portends any immediate marked relative increase in Canadian imports.[33] In any event, neither the immediate record nor any other matter properly within the cognizance of the Presiding Examiner indicates the propriety or the necessity of going beyond the Natural Gas Act and the policies expressed therein[34] for the purpose of determining the issues of this proceeding.

Intervener also asserts that imports of natural gas serve to supplant domestic petroleum products and to provide natural gas liquids which compete in domestic markets to the disadvantage of the domestic petroleum industry. Intervener describes the impact of imports of Canadian natural gas for which authorizations have been approved in terms of energy equivalent barrels of crude oil;[35] although it has been said that petroleum fuels have such a broad utilization that oil itself is only in partial competition with natural gas.[36] Intervener's immediate approach, although bearing upon the broader import problem presented above, also relates to the displacement-of-fuels objection raised by coal, oil, and related interests in earlier proceedings before the Commission, in which it has been generally held that the interests of competing fuels are to be considered along with those of all others,[37] but that the authorization sought (certificate) would be granted where it appeared that preponderant advantages would attend the proposed use of the gas,[38] or an overbalancing public benefit would result.[39] As issues of this nature go to that of the public interest,[40] the Commission has also applied these principles in import cases, particularly in regard to Montana Power's earlier applications where Canadian imports were authorized[41] on a holding, generally expressed, that Section 3 of the Act does not require that unavoidable adverse consequences to competing fuels be given such paramount consideration as to control the ultimate determination as to public interest.

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[23] Where it is stated, in part: "In view of the decline in the reserve life index of proved recoverable reserves in the United States, and the increasing use of gas, a matter which has come to our attention incessantly, we agree with the examiner that this is a factor which weighs in favor of the St. Lawrence projects" (268).

[24] *The Montana Power Company* (G–2805, *et al.*, 1955) 14 FPC 242; affirming the Presiding Examiner's decision at 14 FPC 227, wherein the latter stated: "Finally, it is common knowledge that natural gas is a highly valuable resource available in limited exhaustible quantities in the United States. It seems self-evident that any reasonable augmentation of our limited domestic supplies is desirable unless clearly outweighed by damage to the public interest" (240).

[25] *Middle Atlantic*: New York; *East North Central*: Illinois; Michigan, and Wisconsin; *West North Central*: Minnesota and North Dakota; *Rocky Mountain*: Idaho, Montana, and Nevada; *Pacific:* California, Oregon, and Washington; but principally to California, Montana, Oregon, Washington, and Wisconsin. See, *Minerals Yearbooks,* U.S. Bureau of Mines, years 1962 and 1963; and *Mineral Industry Surveys,* U.S. Bureau of Mines, August 17, 1965.

[26] *Midwestern Gas Transmission Co., et al.,* (G–18313, *et al.,* 1959) 22 FPC 775: Minnesota, North Dakota, and Wisconsin.

[27] *Pacific Gas Transmission Co., et al.* (G–17350, *et al.,* 1960) 24 FPC 134: California, Idaho, Oregon, and Washington.

[28] *The Montana Power Co., et al.* (G–17370, *et al.,* 1960) 24 FPC 134: Montana.

[29] *St. Lawrence Gas Company, Inc., et al.* (G–17500, *et al.,* 1961) 26 FPC 265: New York.

[30] *Tennessee Gas Transmission Co.* (G–20388, *et al.,* 1961) 26 FPC 860: New York State area, interruptible gas.

[31] *Annual Report* (1964), pp. 107, 108.

[32] *Vide: Pacific Gas Transmission Co., et al.* (G–17350, *et al.,* 1960) *supra,* at 148–149; *St. Lawrence Gas Company, Inc., et al.* (G–17500, *et al.,* 1961) *supra,* at 267–268.

[33] See, *FPC National Power Survey,* Part II, p. 325.

[34] See, *Coastal Transmission Corp., et al.* (G–18338, *et al.,* 1961) 26 FPC 318, a certificate case; and, *McLean Trucking Co.* v. *U.S.,* 321 U.S. 67, 79–80.

[35] Br., p. 17; *i.e.,* 224,000 bbs. of crude daily.

[36] *Smith-Wimberly Report,* Natural Gas Investigation (G–580, 1948), p. 323 *Cf., Minerals Yearbooks,* U.S. Bureau of Mines, 1945 and 1963.

Canadian sources of supply are of particular moment to Montana Power, for the problem of dwindling reserves and unsuccessful efforts to find supplemental sources of supply in Montana and adjacent areas which first confronted Montana Power in the 1940s has not been solved. Despite continuing exploration no significant local discoveries have resulted,[42] and the grave doubts expressed by the Commission in a prior decision, as to the probability of discovery of gas in appreciable volume in Montana, or within range of economic transmission to Montana Power's gas system elsewhere than in Canada,[43] are confirmed by the evidence received in this case, and in all the circumstances it is not to be concluded that the importation proposed would have adverse effects upon the incentive to explore for and develop domestic reserves of either gas or oil.[44]

The Public Interest

It is found and concluded that Intervener's contention that granting an authorization or approval in the record herein would be to proceed contrary to a long-established national policy with respect to petroleum imports that is applicable to natural gas has no foundation of record fact; that the proposed additional importation will not be inconsistent with the public interest; and that the same should be authorized as hereinafter provided.

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[37] *American Louisiana Pipe Line Co., et al.* (G–2306, *et al.*, 1958) 20 FPC 575, 608, 609; see, *American Louisiana Pipe Line Co., et al.* (G–2306, *et al.*, 1956) 13 FPC 380, 391. So, *Texas Eastern Transmission Corp.* (G–2503, 1955) 14 FPC 38, 46.

[38] *Southern Natural Gas Co.* (G–14740, 1962) 28 FPC 283; *Panhandle Eastern Pipe Line Co.* (G–1722, 1952) 11 FPC 655, 658; *Northern Natural Gas Co.* (G–2409, 1956) 15 FPC 1634, 1636.

[39] *Coastal Transmission Corp., et al.* (G–18338, *et al.*, 1961) 26 FPC 318, 325; *Southern Natural Gas Co.* (G–19632, *et al.*, 1961) 25 FPC 925, 936; *Blue Ridge Gas Co.* (G–14422, 1960) 23 FPC 245, 247. So, *Northern Natural Gas Co., et al.* (G–17485, *et al.*, 1959) 22 FPC 164, 171–172, and 175; *Cities Service Gas Co.* (G–10458, 1957) 17 FPC 516, 523–524, adopted at 528; *Transcontinental Gas Pipe Line Corp., et al.* (G–10000, *et al.*, 1957) 17 FPC 360, 364; *Scranton-Spring Brook Water Service Co.* (G–10251, 1956) 17 FPC 25, modified and adopted at 38–39.

[40] *Carolina Natural Gas Corp., et al.* (G–1335, *et al.*, 1950) 10 FPC 469, 480, modified and affirmed at 524–525; *Commonwealth Natural Gas Corp., et al.* (G–963, *et al.*, 1950) 9 FPC 70, 81, 87, 90.

[41] *The Montana Power Co., et al.* (G–17370, *et al.*, 1960) 24 FPC 134–157; same (G–2805, *et al.*, 1955) 14 FPC 227, at 238, 242; same (G–1712, *et al.*, 1952) 11 FPC 1, 8.

[42] The last large discovery of gas in Montana appears to have been that of the Cut Bank field in 1926.

[43] *The Montana Power Company* (G–2805, *et al.*, 1955) 14 FPC 227, 237.

[44] More broadly along this line, the Commission's 1964 *Annual Report* makes note of the absence of apparent major changes in the outlook for domestic leasing and exploration activities, even though annual imports from Canada totaled some 356,455,000 Mcf, *i.e.*, 2.42 percent of the corresponding 1963 domestic production of 14,746,663,000 Mcf, *Minerals Yearbook* (1964) U.S. Bureau of Mines, p. 346.

The Application for a Presidential Permit

Montana Power also applies for a Presidential Permit to continue to maintain and operate existing facilities at the border for the importation here proposed. The facilities were authorized by the Permit issued September 19, 1960, in Docket No. G–17370, and are presently used to import the 30,000 Mcf per day of natural gas authorized in Docket No. G–17371. The importation of the additional gas at the same point of interconnection and by the same facilities avoids the necessity of constructing any other facilities for the purpose, and no change or alteration in the existing facilities is required.

The existing Permit which grants permission to construct, operate, maintain, and connect the aforesaid natural gas border facilities provides that these are to be utilized for the transportation of natural gas from Canada to the United States in the amount, at the rate, and in the manner authorized by the Commission under Section 3 of the Act.[45]

Under these circumstances it is apparent that the terms of the existing Permit sufficiently provide for the additional imports proposed and no amendment or additional Permit is required.[46]

FURTHER FINDINGS AND CONCLUSIONS

Montana Power is a "person" within the meaning of Section 2(1) and Section 3 of the Act. It owns and operates a natural gas production gathering, transmission and distribution system in the State of Montana for the sale of natural gas for ultimate public consumption within that State; its rates for natural gas service are regulated by the Public Service Commission of Montana; and the gas which it proposes to receive from Canadian-Montana at the international border will be used solely in Montana.

The importation of natural gas herein proposed should be authorized subject to the conditions stated in the Order included as a part of this decision.

Proposed findings and conclusions inconsistent with the findings and conclusions of this decision are hereby denied.

ORDER

Upon consideration of the record herein, the contentions set forth in the briefs and proposed findings of respective counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this Order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) Authorization is hereby issued to The Montana Power Company to import from Canada additional gas to an average of 10,000 Mcf per day commencing on or about November 1, 1966, and to an average of 20,000 Mcf per day commencing on or about November 1, 1967, all as more fully described in the application filed herein in Docket No. G–17371 and the evidence received in these proceedings.

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[45] The facilities covered by the existing Permit consist of that portion of the 16-inch pipeline, extending approximately 51 miles from near Cut Bank, Montana, to the border, which is located at the boundary where it connects with a 16-inch pipeline extending northerly into the Province of Alberta, Canada. The permit is not limited to a stated term.

[46] *Midwestern Gas Transmission Co., et al.* (CP64–308, *et al.*, 1965) Opinion No. 469, 34 FPC 457 at 460.

(B) The authorization hereby granted is subject to the applicable terms and conditions of the Commission's order issued to The Montana Power Company in Docket No. G–17371, August 5, 1960 (24 FPC 134).

EWING G. SIMPSON,
Presiding Examiner.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ST. CROIX PAPER COMPANY, PROJECT NO. 2492

ORDER GRANTING REHEARING

(Issued February 8, 1966)

On January 14, 1966, Philip J. Hennessey, III, filed for himself and others, an application for rehearing on the Commission's order issued December 17, 1965, 34 FPC 1482, denying petition to intervene in the above-entitled license proceeding.

The Commission finds:

It is appropriate and in the public interest to grant rehearing on the aforesaid order, as hereinafter provided.

The Commission orders:

Rehearing on the aforesaid order issued December 17, 1965, is hereby granted for further consideration.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SKELLY OIL COMPANY, ET AL., DOCKET NO. G–18638, ET AL.

ORDER PERMITTING FILING OF FACT STATEMENTS AND BRIEFS

(Issued February 8, 1966)

By our Order and Opinion No. 362, issued August 30, 1962, 28 FPC 401, we granted permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act to thirteen producers in fifteen dockets for sales of natural gas in Texas Railroad Commission District No. 4 at conditioned initial prices of 15 cents per Mcf.

Twelve of the producers, involved in fourteen of the fifteen dockets, had charged and collected rates in excess of the "in-line" price of 15 cents per Mcf while making sales under temporary certificates.[1] We did not order refunds of the excess collected because the temporary certificates contained no refund conditions.

On appeals by intervenors The United Gas Improvement Company, Long Island Lighting Company, and Public Service Commission of the State of New York, the Circuit Court of Appeals for the District of Columbia held that the power to order refunds did not depend upon explicit refund provision in the temporary authorizations. That power, the court declared, "resides in the Commission when it grants a permanent certificate. To hold that it may not then require refund of excessive prices previously permitted without notice or hearing or mature consideration, since the Commission acted on an emergency basis, would be inconsistent with the regulatory responsibility of the Commission to aid in the ascertainment and authorization of just and reasonable rates" (329 F. 2d 249). The court in part bases the foregoing conclusions on the general language inserted in all temporary certificates to the effect that:

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[1] The case of one producer, Jake L. Hamon, CI61–930, has since been settled.

> This acceptance for filing shall not be construed as constituting approval of any rate * * * contained in the rate filing; * * * and such acceptance is without prejudice to any findings or orders which may be made in the final disposition of this proceeding * * * etc. * * * but authorization and acceptance of the rate schedule are without prejudice to such final disposition of the certificate application as the record may require. * * * (329 F. 2d 249).

The court remanded the case to the Commission for further consideration of the refund question in the light of the court's opinion, declaring "There must be, with the assistance of the parties, a broader and more penetrating analysis and consideration of the factors pro and con a refund, and its amount or extent, in arriving at an equitable conclusion."

Petitions for certiorari were denied by the Supreme Court. It is now established that the Commission had both the power and the duty to require refunds of amounts collected in excess of the established "in-line" price unless in our opinion the equities of the case demanded that all or part of the excessive amounts collected should not be refunded.[3]

In Amerada Petroleum Corporation, et al., Opinion No. 422 (March 23, 1964, 31 FPC 623), we summarized the standard set by the Circuit Court of Appeals in the *Skelly* case as follows:

> The court has also stated, however, that the existence of the power to order refunds at the time of permanent certification does not mean that its exercise is mandatory. The standard to be followed is the standard of equity, and the decision as to whether refunds should be ordered is to turn on equitable considerations. The existence of a refund requirement is one such consideration but is not controlling; the public interest factors must also be weighed and may be adequate to offset the absence of an explicit condition. (p. 639)

No statements of facts or briefs as to the equities have been filed by any participant herein. We think those producers who wish to do so should be given opportunity to file such statements and briefs, so we may determine whether facts exist which bear upon the equities and were not made known to the courts, as well as whether particular facts exist in individual cases which would affect their determination. Reiteration of general arguments which were presented to the courts will not be sufficient to avoid a refund requirement. Such arguments were weighed and rejected by the courts, and their determination is now the law of this case.

In Docket No. G-18639 a different question arises. On November 22, 1960, 24 FPC 979, the Commission ordered that a permanent certificate of public convenience and necessity be issued to *Glen A. Martin, et al.* at an initial price of

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[3] After the Supreme Court granted certiorari in the *Callery Properties* case on March 8, 1965, we deferred further action in this proceeding until after the Supreme Court had decided the *Callery* case. On December 7, 1965 the Supreme Court reversed the decision of the Circuit Court of Appeals in the *Callery* case. *United Gas Improvement Co.* v. *Callery Properties, Inc.*, 382 U.S. 223.

16 cents per Mcf. On December 16, 1960 the producers mailed their acceptance of this certificate, but on December 22, 1960 the Public Service Commission of the State of New York applied for rehearing of the order of November 22. On January 19, 1961 the rehearing was granted. This matter was later consolidated in the instant proceeding, and by the order of August 30, 1962, 28 FPC 401, a permanent certificate was issued to *Glen A. Martin, et al.*, at an initial price of 15 cents per Mcf. Any deliveries by the producers during the pendancy of the rehearing were made with full notice that the Commission order might be modified. We think, however, that the producers should be given an opportunity to file any statement or brief they may wish with respect to the refund of any amounts collected in excess of 15 cents per Mcf.

The Commission orders:

(A) Each certificate holder listed in Appendix A hereto may file in triplicate within 30 days of the effective date of this order a brief and a statement with respect to any facts which the certificate holder contends would render unjust and inequitable the refund of any or all amounts collected in excess of 15 cents per Mcf.

(B) Copies of all filings made pursuant to ordering paragraph (A) hereof shall be served at the time of filing upon all participants.

(C) Any participant shall have 20 days to respond to any statement or brief filed pursuant to ordering paragraph (A) hereof.

APPENDIX A

	Docket No.
Skelly Oil Co	G–18638
Tenneco Oil Co	G–18765
George H. Coates, Operator, *et al*	G–18938
George H. Coates, *et al*	CI61–178
Continental Oil Co	CI60–71
Sunray DX Oil Co	CI60–428
Mokeen Oil Co., *et al*	CI60–789
Sohio Oil Co	CI61–77, CI61–79
Coastal States Gas Producing Co	CI61–471, CI61–472
Russell Maguire, *et al*	CI61–530
Morgan Minerals Corp	CI61–648
Glen A. Martin, *et al*	G–18639

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ORDER ESTABLISHING NATIONAL POWER SURVEY ADVISORY COMMITTEE ON RELIABILITY OF ELECTRIC BULK POWER SUPPLY

(February 9, 1966)*

The Northeast power failure of November 9–10, 1965, has heightened public awareness of our national dependence upon the reliability of electric bulk power supply. Pursuant to the President's memorandum of November 9, 1965, the Commission has embarked upon a careful investigation of the events in the Northeast experience, and has called upon the top electric power experts in our nation to assist us in the conduct of the investigation. The Commission filed

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*Published in the Federal Register on February 17, 1966 (31 F.R. 2875).

a Report to the President on December 6, 1965, and is continuing the investigation requested by the President with the assistance of the Advisory Panel for the Northeast Power Interruption, including experts from various segments of the electric industry, the scientific community, and the states.

It is appropriate, that the causes and effects of a number of recent major power failures be carefully studied and that general criteria and guidelines relating to the Reliability of Bulk Power Supply be reviewed. We believe that the results of this study would be useful to utilities and interconnected power systems in all regions of the nation. The Commission will seek advisory assistance from among the nation's most experienced and best qualified experts in the field. We further believe that such review should be conducted within the framework of the National Power Survey program in coordination with the Executive Advisory Committee and with the assistance of the Regional Advisory Committees. It is in the public interest that a National Power Survey Advisory Committee on Reliability of Electric Bulk Power Supply be established for the purpose specified below and, effective upon the issuance of this order, the Committee is established, in accordance with the Federal Power Act and Executive Order No. 11007 of February 26, 1962, 27 F.R. 1875.

1. *Purpose.* The Committee shall assist the Commission and the Executive Advisory Committee in its work with and for the Commission to review and investigate the problems involved in assuring the reliable supply of bulk power, and shall prepare one or more reports thereon. The Committee shall review power system planning and operating policies and practices, and shall recommend general criteria and guidelines for system planning and operation and maintenance of facilities to assure the reliability of bulk power supply on an area and regional basis. It will examine means for improving intersystem coordination and make recommendations for positive actions to be taken including effective pooling arrangements.

2. *Selection of Committee Members.* All Committee members and alternates shall be selected by the Chairman of the Commission with the approval of the Commission.

3. *Conduct of Meetings.* The Chairman of the Commission, or in his absence, any full-time employee of the Commission designated by the Chairman of the Commission, shall act as chairman of Committee meetings and shall be responsible for opening and conducting meetings and for adjourning meetings when, in his judgment, adjournment is in the public interest.

4. *Minutes.* The Chairman of the Commission having made a finding that maintenance of a verbatim transcript would be impracticable and not in the public interest, there shall be kept by the Secretary of the Committee, in lieu thereof, a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Committee.

5. *Secretary of the Committee.* The Chairman of the Commission shall appoint a Secretary of the Committee from the Commission staff who shall be responsible for preparing summary minutes of all Committee meetings, preparing agenda, notifying members of the meetings, and maintaining all records related to organization, membership, and operations of the Committee. The Secretary or his alternate shall be present during all meetings and shall certify the accuracy of all minutes.

6. *Location and Time of Meetings.* Meetings will convene at the call of the Chairman of the Commission at the Office of the Federal Power Commission, located at 441 G Street, N.W., Washington, D.C. 20426, unless otherwise directed. Ordinarily, meetings will be held during the regular working hours of the Federal Power Commission.

7. *Report of the Committee.* The reports and recommendations of the Committee will be presented to the Commission in written form through the Executive Advisory Committee. The content shall be limited to matters relating to those set forth in Item 1, *Purpose.*

8. *Duration of the Committee.* The Committee is intended to be *ad hoc* in nature and shall terminate upon the acceptance by the Commission of its report or reports, and in any event not later than two years subsequent to its date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such two-year period, that continued existence of the Committee is in the public interest.

The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register in accordance with the provisions of the Bureau of the Budget Circular No. A-63.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER EXTENDING PARTIAL STAY[1]

(Issued February 11, 1966)

By order issued herein on November 12, 1965, 34 FPC 1288, the Commission granted a stay until January 20, 1966, of the effectiveness of Opinion Nos. 468 and 468-A, 34 FPC 159, 1068, insofar as they required or prohibited changes in rates. The stay was essentially consistent with that granted by the Tenth Circuit on October 20, 1965, in *Skelly Oil Co.* v. *F.P.C.* (CA10, No. 8385, *et al.*). The Court there stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468-A as to certain producers and further provided that any member of the Court might grant a similar stay if other petitions for review were filed in or transferred to that Court. The Commission in its November 12 order, however, did not stay the filings required by ordering paragraphs (E), (F) and (I) of Opinion No. 468, as the Court had done.

The Court subsequently extended its previous stay, among other things, by an order issued on January 20, 1966, applicable to all petitioning natural gas companies until 30 days after the decision of that Court on the merits of the petitions for review or 30 days after the determination of any petition for rehearing which may be timely filed. That order did not further stay, however, the filing requirements of paragraphs (E), (F) and (I) of Opinion No. 468, and provided for the filings under those paragraphs within various specified periods.

In view of the Court's further stay, we conclude that it would be appropriate to extend the partial stay provided for in our November 12 order for the same period of time provided in the Court order. We shall also adopt the filing dates under paragraphs (E), (F), and (I) of Opinion No. 468 prescribed by the Court in its stay order. Any filings made because of the further stay herein of paragraph (H) relating to the moratorium on rate increases will be rejected, *ab initio*, if the Commission's moratorium is ultimately upheld upon judicial review.

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[1] This order is not applicable to any producer which has obtained a court stay of our *Permian* decision.

Nothing in this order shall be construed to prevent voluntary compliance by respondents with the provisions of Opinion Nos. 468 and 468–A.

The Commission orders:

(A) The partial stay heretofore granted by order issued herein on November 12, 1965, is extended until 30 days after the decision of the Tenth Circuit on the merits of the petitions for review of Opinion Nos. 468 and 468–A or 30 days after the determination of any petition for rehearing which may be timely filed.

(B) The filing dates provided for in our November 12, 1965, order with respect to paragraphs (E), (F), and (I) of Opinion No. 468 are extended to February 19, 1966, March 21, 1966, and April 20, 1966, respectively.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS DETERMINATION, DOCKET NO. E–6384

ORDER APPROVING HEADWATER BENEFITS PAYMENTS

(Issued February 11, 1966)

This order, issued under Section 13.1 of the Regulations under the Federal Power Act, approves payments for headwater benefits provided by certain licensed hydroelectric developments to non-Federal downstream developments in the Columbia River Basin between September 1, 1964, and August 31, 1965. Section 13.1 provides that headwater benefits settlements between licensees and non-Federal parties may be filed for approval by the Commission in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

On October 29, 1964, The Washington Water Power Company, The Montana Power Company, Public Utility District No. 1 of Pend Oreille County, Public Utility District No. 1 of Chelan County, and Public Utility District No. 2 of Grant County filed the Pacific Northwest Coordination Agreement dated September 1, 1963, for approval of headwater benefits payments among the non-Federal parties pursuant to Section 13.1 of the Regulations. Exhibit No. 4 of the Agreement showed the payments to be made among the non-Federal parties for the year September 1, 1963, through August 31, 1964. By order of February 19, 1965, 33 FPC 300, the Commission approved the payments among the non-Federal parties shown on the exhibit for this year. On December 6, 1965, the same non-Federal parties filed a revised Exhibit No. 4 showing the following payments among themselves for the succeeding year, September 1, 1964, through August 31, 1965:

Payer	Payees			
	The Montana Power Co.	The Washington Water Power Co.	PUD No. 1 of Pend Oreille County	PUD No. 1 of Chelan County
The Washington Water Power Co.	$68,700			
Pend Oreille PUD	10,300	$4,300		
Chelan PUD	39,900	41,400	$2,400	
Grant PUD	39,700	40,400	2,800	$28,500
Totals	158,600	86,100	5,200	28,500

The payments shown by the revised exhibit are substantially the same as those approved for the preceding year.

The Commission finds:

The Pacific Northwest Coordination Agreement dated September 1, 1963, under which payments have been made as tabulated above, constitutes an effective and reasonable method of compensating licensees for headwater benefits provided in the Columbia River Basin to non-Federal parties from September 1, 1964, to August 31, 1965.

The Commission orders:

The payments made pursuant to the Pacific Northwest Coordination Agreement dated September 1, 1963, are approved under Section 13.1 of the Regulations under the Federal Power Act with respect to settlement for headwater benefits provided in the Columbia River Basin by licensees to non-Federal projects from September 1, 1964, through August 31, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS DETERMINATION, DOCKET NO. E-6384

ORDER TERMINATING PROCEEDING ON REHEARING

(Issued February 11, 1966)

On April 30, 1965, 33 FPC 907, the Commission issued an order under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)) determining payments to the United States in the amount of $777,300 for benefits provided by its headwater improvements to certain non-Federal projects in the Columbia River Basin between January 1, 1957, and August 31, 1961. The order, in addition, fixed a payment of $3,300 for costs incurred through April 30, 1965, in making the determination. The Secretary of the Interior, who is a party to the proceeding pursuant to subparagraph 11.25(b)(4) of the Regulations under the Federal Power Act, on May 28, 1965, filed an application for rehearing of the order and a request for a hearing. On June 22, 1965, the Commission granted the application for rehearing and fixed hearing. The payments were made, under protest, by the non-Federal parties on June 29, 1965. On November 2, 1965, 34 FPC 1217, with the consent of the Secretary of the Interior, the order of April 30, 1965, was made final as to Public Utility District No. 1 of Chelan County, one of the non-Federal parties, and Chelan thereupon was dismissed from the proceeding on rehearing. A prehearing conference was held on November 30, 1965, and the hearing was convened on December 21, 1965. On January 27, 1966, after the Commission staff had filed its direct testimony, but before the other parties had filed theirs, the Secretary of the Interior, with the concurrence of the remaining non-Federal parties, filed a motion to withdraw his application for rehearing and request for hearing. The motion states that settlements have been made by the Department of the Interior and the non-Federal parties concerning "certain power sales marketing arrangements and services" for the period of the determination. It requests that the payments to the United States as determined in the order of April 30, 1965, be made final.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act, particularly Section 10(f) thereof, that the aforesaid motion be granted.

The Commission orders:

(A) The aforesaid motion is hereby granted.

(B) The order of June 22, 1965, granting rehearing of the order of April 30, 1965, is hereby vacated.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-163

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 11, 1966)

On November 29, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-163 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, as more fully set forth in the application.

Applicant constructed and placed into operation approximately .01 mile of 4½-inch O.D. and .01 mile of 2⅜-inch O.D. pipeline, a wellhead meter and a dehydrator to receive dry gas from Texaco Inc. (Texaco). The gas was received at the wellhead of Texaco's Texas-LaBarge No. 5-D well located in Sublette County, Wyoming.

The well is no longer productive, and, therefore, Applicant's facilities utilized for the purchase and receipt of gas from the well are no longer required. Applicant proposes to abandon the facilities by retiring the pipeline in place and salvaging the dehydrator and wellhead meter pending future need.

The gas purchase agreement between Texaco and Applicant will remain effective since gas will be purchased from other wells which are still producing from the dedicated acreage.

Due notice of the filing of the application was published in the Federal Register on December 14, 1965 (30 F.R. 15383). No protest, petition to intervene or notice of intervention has been filed.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP66–159

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1966)

On November 22, 1965, Florida Gas Transmission Company (Applicant) filed an application in Docket No. CP66–159 as supplemented on December 29, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3.79 miles of 4½-inch O.D. lateral pipeline for the transportation and delivery of natural gas to a direct interruptible customer, International Minerals & Chemical Corporation (International), near Bradley Junction, in Polk County, Florida, all as more fully set forth in the application.

Applicant proposes to construct and operate the said facilities to deliver to International 3,300 MMBtu (approximately 3,300 Mcf) of natural gas daily and 912,500 MMBtu (approximately 912,500 Mcf) annually on a so-called preferred interruptible basis under the terms of a contract between the Applicant and International dated September 1, 1965. The natural gas will be used as fuel in the processing of phosphate-bearing rock in the manufacture of fertilizer.

The estimated cost of the facilities necessary to the transportation and delivery of the proposed volumes of natural gas to International is $96,000, which will be defrayed from Applicant's current funds.

The natural gas requirements of International's plant will be subject to curtailment when necessary to meet the Applicant's firm service requirements. An appropriate condition to provide for such curtailment will be attached to the certificate issued in this proceeding.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found

by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and transportation of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate be granted on the express condition that the interruptible service authorized herein should be curtailed or interrupted to the extent required to meet existing or future contract maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued in paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LOUISIANA GAS SERVICE COMPANY AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-94

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 11, 1966)

On October 4, 1965, Louisiana Gas Service Company (Applicant) filed in Docket No. CP66-94 an application, as supplemented on January 3, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Respondent) to establish physical connection of its transportation facilities with the distribution facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 100 Mcf of natural gas per day for resale and distribution in the unincorporated community of Transylvania, East Carroll Parish, Louisiana, as more fully described in the application.

Applicant states that residents in and adjacent to the community of Transylvania have requested natural gas service. The proposed distribution system, consisting of 3.6 miles of 3-inch and 2-inch mains is within Applicant's limits of its extension policy for unincorporated areas.

The estimated maximum daily requirements for the first three years of proposed operations is 100 Mcf of gas per day, and the annual requirements are estimated to be as follows:

	Mcf at 15.025 psia		
	First year	Second year	Third year
Residential	5, 568	5, 829	6, 177
School	1, 200	1, 200	1, 200
Cotton gin	2, 500	2, 500	2, 500
Total	9, 268	9, 569	9, 877

Gas will be purchased under Respondent's currently effective Rate Schedule GS-1, Small General Service (Southern Zone).

The estimated cost of the distribution system proposed by Applicant is $41,640, to be financed by a bank loan and company funds.

Respondent was notified of the filing of the application on October 8, 1965. On October 22, 1965, Respondent filed an answer stating that it does not oppose the proposal.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on October 11, 1965 (30 F.R. 13474). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant is a public utility company in the State of Louisiana and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 100 Mcf of natural gas per day to Applicant for resale and distribution in the unincorporated community of Transylvania, East Carroll Parish, Louisiana, and environs, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-185

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1966)

On December 6, 1965, Northern Natural Gas Company (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery of 310 Mcf of natural gas per day to an existing utility customer, Metropolitan Utilities District (MUD), for resale to an industrial customer, Campbell Soup Company (Campbell), as more fully described in the application.

Campbell is a new industrial customer of MUD. Applicant states that firm natural gas service to Campbell's plant offers the most advantageous method of meeting its heating and processing requirements. In addition to space heating, the gas will be used for gas fired ovens and fryers.

MUD will make the firm gas available to Campbell from its presently authorized contract demand of 138,000 Mcf per day from Applicant. Therefore, no change in the contract demand is required.

No new facilities are required.

Due notice of the filing of the application was published in the Federal Register on December 24, 1965 (30 F.R. 16093). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued on April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The proposed transportation of natural gas to MUD hereinbefore described, as more fully described in the application in this proceeding, will be transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The transportation of natural gas, as proposed in the application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Northern Natural Gas Company, authorizing the transportation and delivery of 310 Mcf of natural gas per day to Metropolitan Utilities District, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

(C) The transportation and delivery of the volumes of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP66–165

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1966)

On November 29, 1965, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP66–165 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of an additional point of delivery and sale to Columbia Gas of Ohio, Inc. (Columbia) in Bay Township, Ottawa County, Ohio, as more fully described in the application.

Applicant will tap its Line D–74 in Ottawa County, Ohio, and construct a measuring station and 1,800 feet of 12¾-inch O.D. pipeline, together with the necessary valves, fittings and incidental facilities. Columbia is an existing affiliated wholesale customer of Applicant.

Columbia has requested the new delivery point to enable it to provide service to the U.S. Rubber Company plant and the area on and adjacent to the 1,200-acre site in Ottawa County formerly occupied by the Erie Army Depot. Applicant expects other new industry to move into the site.

The U.S. Rubber Company is the first of the potential industries to actually locate on the site. It will use an estimated Maximum Day requirement of 2,740 Mcf of natural gas during the third year of operations for both manufacture and processing of its finished plan product (coated fabrics for use in automobiles) and for space heating. The gas used in manufacture and processing will be used to fire high temperature hot water boilers and for hot air drying on print machines, embossers and dye lines.

Columbia will not require additional contract volumes of gas from Applicant to render this service.

Applicant will finance the estimated construction cost of $30,500 from funds on hand. The project is economically feasible.

Due notice of the filing of the application was published in the Federal Register on December 14, 1965 (30 F.R. 15384). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation with its principal place of business at Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, issued in Docket No. G–371 (4 FPC 1033).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, The Ohio Fuel Gas Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of the Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 60 days from the date of this order.

LETTER-ORDER REJECTING AMENDMENT TO APPLICATION AND RELATED RATE SCHEDULE

DOCKET No. CI62–825, SOCONY MOBIL OIL COMPANY, INC. (OPERATOR), ET AL.

FEBRUARY 11, 1966*

SOCONY MOBIL OIL COMPANY, INC.
P.O. Box 2444
Houston, Texas 77001

Attention: H. H. Beeson, Attorney-in-Fact

GENTLEMEN: This is with reference to your submittal of January 11, 1966, of a document designated as an "Amendment to Application for Certificate of Public Convenience and Necessity" which had previously been filed in Docket No. CI62–825, together with a document you have designated as "Supplement No. 11 to Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 312." The so-called Supplement consists of an agreement between El Paso Natural Gas Company and Socony Mobil Oil Company, Inc., dated December 22, 1965, which purports to change the date of a contract between the same parties from December 28, 1960, to March 3, 1961.

The certificate application filed in Docket No. CI62–825, among others, together with Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 312 was the subject of a formal hearing in the consolidated proceedings El Paso Natural Gas Company, *et al.*, Docket No. CP64–211, *et al.* Insofar as the proceedings and the motion for severance filed on October 25, 1965, related to the certificate application in Docket No. CI62–825 and Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 312, the principal issue presented was the actual date of execution of the contract comprising FPC Gas Rate Schedule No. 312. The Commission by its Opinion No. 484 issued January 6, 1966, 35 FPC 40, after considering the record in the proceeding, the initial brief and the motion filed October 25, 1965, determined that it could not allow the employment of extrinsic evidence to change the date which appears on the face of the contract, *i.e.*, December 28, 1960. Socony Mobil Oil Company, Inc., contended in those proceedings, as its designated Supplement No. 11 to FPC Gas Rate Schedule No. 312 purports to show, that the actual date of the contract comprising FPC Gas Rate Schedule No. 312 should be March 3, 1961, rather than December 28, 1960.

Socony Mobil Oil Company's submittals of January 11, 1966, are nothing more than an attempt to have readjudicated the issues then just decided 5 days before by the Commission's Opinion No. 484. The submittals of January 11, 1966, merely reiterate, with some further details, the essential conclusion presented in the motion for severance to the effect that "Although the Gas Purchase Contract involved bears a date of December 28, 1960, the Contract was executed by Socony on March 2, 1961, and by El Paso on March 3, 1961" (See Page 3 of the motion filed October 25, 1965).

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* Rehearing denied by order issued March 4, 1966, 35 FPC 333.

Furthermore, it appears that under the guise of a rate filing you are requesting the Commission to accept another recital of essentially the same facts. You also seek to amend your application to conform to the revised version of the evidence as set forth in the agreement of December 22, 1965. In effect, this amounts to an indirect attempt to introduce evidence into a case already adjudicated. The indirect admission of such evidence by way of a rate filing will open the door to unverifiable assertions as to the date when a contract was "executed" and is in conflict with the Commission's opinion which indicated that it did not intend to allow the employment of extrinsic evidence to change the date which appears on the face of the contract.

In view of the fact that the question as to the date of the contract, after hearing, has been decided adversely to the contention of Socony Mobil Oil Company, Inc. on substantially the same representations as are made in the submittals of January 11, 1966, we are of the opinion that we are not required to act on such submittals as an amendment to the certificate application filed in Docket No. CI62-825 and as Supplement No. 11 to Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 312. Accordingly, such submittals are rejected.

By direction of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-156

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued February 11, 1966)

On November 16, 1965, Southern Natural Gas Company (Applicant), filed in Docket No. CP66-156, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural-gas facilities by sale to Northwest Alabama Gas District (Gas District), all as more fully set forth in the application.

Applicant proposes the sale of one meter station in Marion County, Alabama, to its customer, Gas District, which acquired the local distribution system of the Town of Phil Campbell, effective November 1, 1965. The metering station was used to measure the volumes of natural gas sold by Applicant to the Town of Phil Campbell pursuant to a service agreement dated August 7, 1959. The said facilities were certificated in Docket No. G-8565 on February 20, 1956. The meter station will enable Gas District to measure the volumes of natural gas delivered for sale in the Town of Phil Campbell. The abandonment by sale of the above described facilities will not affect service to consumers in the Town of Phil Campbell.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities by sale to Gas District is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant, Southern Natural Gas Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITY OF STARK, KANSAS AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–186

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 11, 1966)

On December 6, 1965, The City of Stark, Kansas (Applicant), filed in Docket No. CP66–186 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the City of Stark, Kansas, and environs, as more fully described in the application.

Applicant will construct and operate a gas distribution system within its borders and 4.8 miles of 2-inch lateral pipeline extending south from the proposed point of interconnection with Respondent's 8-inch main transmission pipeline in Allen County, Kansas, to Applicant's city limits in Neosho County, Kansas. Applicant also will render service to customers situated along the proposed 2-inch lateral pipeline.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three years of proposed operations are as follows:

	First year	*Second year*	*Third year*
Annual (Mcf)	9, 900	11, 540	13, 350
Peak day (Mcf)	142	167	195

The total estimated cost of Applicant's proposed lateral pipeline and its distribution facilities is $45,000, which will be financed by Gas Revenue Bonds and General Obligation Bonds to be issued by Applicant. The proposal is economically feasible.

Respondent filed a letter on December 15, 1965, in which it states that it has no objection to the granting of the application.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on December 28, 1965 (30 F.R. 16172). On January 3, 1966, the State Corporation Commission of Kansas filed a notice of intervention which notice was withdrawn on February 4, 1966. No other notices of intervention, protests or petitions to intervene have been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is a municipality in the State of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the area along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver natural gas to Applicant for resale and distribution within the city limits of Applicant, and environs, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Permission for the withdrawal of the notice of intervention filed by the State Corporation Commission of Kansas on January 3, 1966, is granted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRUNKLINE GAS COMPANY, DOCKET NO. CP66–131

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 11, 1966)

On October 27, 1965, Trunkline Gas Company (Applicant) filed in Docket No. CP66–131 an application, as supplemented on January 4, 1966, pursuant to

Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale in interstate commerce of increased volumes of natural gas for resale, as more fully set forth in the application.

Applicant will increase its transmission system capacity from 945,000 to 1,040,000 Mcf of natural gas per day by constructing and operating the following new facilities:

A. 16.4 miles of 24-inch O.D. pipeline to loop a portion of Applicant's existing main transmission line between Cypress, Texas, and Longville, Louisiana;

B. 200.7 miles of 36-inch O.D. pipeline to loop portions of Applicant's existing main transmission lines between Longville, Louisiana, and Tuscola, Illinois;

C. 4,200 horsepower at a new compressor station to be designated Station No. 313, Centerville, Louisiana;

D. 2,000 additional horsepower at existing Compressor Station No. 31, Cypress, Texas;

E. 3,000 additional horsepower at each of the following existing main line compressor stations: Station No. 57, Pollock, Louisiana, Station No. 75, Shaw, Mississippi, Station No. 93, Dyersburg, Tennessee, and Station No. 112 Johnsonville, Illinois;

F. 2,000 additional horsepower at existing main line Compressor Station No. 121, Tuscola, Illinois;

G. 6,000 horsepower at a new compressor station to be designated Station No. 134, North Judson, Indiana.

Sales of natural gas by Applicant to the following listed customers will be made pursuant to the customers' request that the service commence in November 1966. Sales to Consumers Power Company will be made under Applicant's P-2 Rate Schedule, and the sales to Central Illinois Public Service Company (CIPSCo) and the other indicated existing customers will be made under Applicant's G-1, G-2 and SG-1 Rate Schedules.

Customers	Mcf per day			Increase in annual vol. Mcf
	Present contract demand	Proposed contract demand	Increase	
Consumers Power Co.	275,000	350,000	75,000	21,660,000
CIPSCo-Effingham, Ill.	6,400	6,800	400	39,400
CIPSCo-Newton, Ill.	2,866	3,200	334	61,500
CIPSCo-Hoopeston, Ill.	4,000	4,200	200	57,000
Cisne, Ill.	580	650	70	19,400
Lake County Utility District	2,590	3,100	510	20,000
Totals	291,436	367,950	76,514	21,857,300

The increased volumes are required to meet the increases in consumer requirements, as evidenced by the customers' historical growth pattern.

The total estimated cost of the proposed construction is $44,745,000, which amount is to be financed initially by short-term bank loans, to be followed by permanent financing in the form of $40,000,000 First Mortgage Bonds at 4¾ percent.

Due notice of the filing of the application was published in the Federal Register on November 13, 1965 (30 F.R. 14288). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is willing and able properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Trunkline Gas Company authorizing the construction and operation of the facilities and the transportation and sale of natural gas, as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED STATES DEPARTMENT OF THE INTERIOR, BONNEVILLE POWER ADMINISTRATION, DOCKET NOS. E-6611, E-6905 AND E-7242

ORDER DENYING APPLICATIONS FOR RECONSIDERATION AND STAY

(Issued February 11, 1966)

On January 13, 1966, the Public Utility Commissioner of the State of Oregon filed a "Petition for Rehearing" and the National Rural Electric Cooperative Association filed a "Petition for Rehearing and Reconsideration", relating to our Opinion No. 482 and order issued December 14, 1965, 34 FPC 1462, in the above-entitled proceeding. In the Opinion and order we approved rates for the Bonneville Power Administration for the period December 20, 1965, to December 20, 1969.

The applicants for rehearing contend that the Commission has not followed the standards of the statutes involved and otherwise has improperly approved Bonneville's proposed rates. The Oregon Commissioner also contends that we have failed to afford him notice and hearing as provided in our rules and as required by the Constitution of the United States, and alternatively have failed to publish notice of the procedure to be followed as provided in Section 3 of the Administrative Procedure Act.[1] He also asks that the rates be stayed pending our ruling herein. On January 17, 1966, the Secretary of the Interior, through the Administrator of the Bonneville Power Administration, moved that the application for rehearing of the Public Utility Commissioner of Oregon be denied as "frivolous."

This proceeding is not subject to the Federal Power Act, which provides in Section 313 for applications for rehearing and review. Bonneville's proposed rates were submitted to this Commission pursuant to Sections 5 and 6 of the Bonneville Project Act[2] and Section 5 of the Flood Control Act of 1944,[3] neither of which provides for the filing of applications for rehearing or for court review. The Bonneville Act and the Flood Control Act provide for the preparation of rate schedules by the Administrator and the sale of power generated at the Federal hydroelectric projects involved upon confirmation and approval of the rate schedules by this Commission. Our function is not one of regulating rates as we do under the Natural Gas Act or the Federal Power Act, but one of assuring that the Secretary of the Interior complies with statutory criteria in carrying out a proprietary function. This proceeding thus concerns how the government shall manage its own internal affairs, namely the determination of the rate level for its own power. We note further that the Cooperative Association would not characterize the Secretary's criteria for payout as unreasonable or as an abuse of discretion. Judicial review and the preliminary steps of rehearing are not available to the complainants here, and we shall treat their filings as petitions for reconsideration.

Since we are concerned here with government operations and not regulation, the legal requirements relating to hearings, including the provisions of our Rules of Practice and Procedure governing the manner in carrying out our regulatory functions under the Federal Power and Natural Gas Acts do not apply. Moreover, without conceding its applicability we have, in effect, complied with Section 3 of the Administrative Procedure Act cited by the Oregon Commissioner by stating and publishing in advance the procedure to be followed in passing upon the rates in issue here. Notice of the filing of Bonneville's rate proposal was published in the Federal Register on October 9, 1965 (30 F.R. 12903). The notice described the rate proposal and invited the submission of comments or protests. Moreover our subsequent order of October 29, 1965, providing for the oral hearing that was subsequently held on November 18, 1965, likewise was published in the Federal Register on November 6, 1965 (30 F.R. 14056). In order to assist the Commission in carrying out its statutory responsibilities this order called for the submission of factual data and oral argument as to the scope of the Commission's review of the proposed rates. Both the notice and the order were also made public at the Commission's offices, the latter being accompanied by a separate Press Release (No. 14,083). In short, the Oregon Commissioner and all other interested parties were fully informed of the procedures we intended to follow.

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[1] 5 U.S.C. § 1002.

[2] 50 Stat. 735, 16 U.S.C. 832d and 832e.

[3] 58 Stat. 890, 16 U.S.C. 825s.

The substantive questions raised by the two petitions were covered in Opinion No. 482 and require no further elaboration here except as follows. The Oregon Commissioner contends that the order makes no finding with respect to allocation of costs made by the Federal Power Commission as provided in the Bonneville Act, 16 USC § 832f. The Oregon Commissioner has not shown that consumers are in any way injured by the allocation of costs made by the Secretary of the Interior. On our part we are of the opinion that the result is reasonable. We may observe that the allocation provision in the Bonneville Act is applicable only to projects whose rates are established under that act. These comprise Bonneville, McNary, Ice Harbor, Little Goose, Lower Granite and Lower Monumental. We have made cost allocations of the first three projects, which have been fully constructed.[4] The justification for the proposed rates submitted by the Secretary of the Interior is consistent with these cost allocations. We have not yet made cost allocations with respect to the last three projects, which have not been completed. However, it appears that the presentation of the Secretary is consistent with methods of allocation previously followed. Further, the methods used are the same for all projects constructed by the Corps of Engineers, for which we are setting rates here, except for the early allocation made for the Bonneville project.

The Oregon Commissioner also argues that we did not find that the rates were low enough to "encourage the widest possible diversified use of electric energy" as provided in Section 6 of the Bonneville Act. As we explained in our Opinion No. 482 this part of the statutory standard cannot be read in isolation, and we are also under an obligation to insure that the rates were not set so low as to fail to meet the statutory repayment standards. The rates we approved were high enough to meet these repayment standards, but not unnecessarily high, and were in our opinion properly fixed so as to meet the statutory requirement quoted above with respect to the use of electric energy.

In view of the discussion above there would have been no justification for staying the effect of our approval of Bonneville's rate increase even if that were legally possible.

The Commission orders:

(A) The applications for reconsideration filed by the Public Utility Commissioner of Oregon and the National Rural Electric Cooperative Association are denied.

(B) The request of the Commissioner of Oregon for a stay is denied.

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[4] *Bonneville Project,* 4 FPC 950; *McNary Project,* 33 FPC 411, Docket No. E-6383, March 5, 1965; *Ice Harbor Project,* 34 FPC 714, Docket No. E-7235, Sept. 1, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WASHINGTON GAS LIGHT COMPANY, DOCKET NO. CP62-205

FINDINGS AND ORDER AMENDING ORDER GRANTING DETERMINATION OF A SERVICE AREA PURSUANT TO SECTION 7(f) OF THE NATURAL GAS ACT

(Issued February 11, 1966)

On January 4, 1966, Washington Gas Light Company (Applicant) filed in Docket No. CP62-205 an application to amend the Commission's order issued October 31, 1962, 28 FPC 753, in said docket, pursuant to Section 7(f) of the Natural Gas Act, to include Charles County, Maryland, in the service area determination made and granted by said order, all as more fully set forth in the application to amend.

The service area determination heretofore requested by Applicant and authorized by the order of October 31, 1962, permitting Applicant, without further authorization to enlarge and extend its facilities for the purpose of supplying increased market demands, other than sales for resale, presently comprises: The District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, exclusive, however, of the following areas:

Exclusion 1

The area in Prince Georges County, Maryland, described as Laurel Election District No. 10 of Prince Georges County.

Exclusion 2

The area in Prince William County, Virginia, described as Dumfries and vicinity, and Quantico Marine Base and territory adjacent thereto along the southern boundary of Prince William County.

Applicant proposes to initiate natural gas service in Charles County by extending a pipeline from its existing facilities located in southern Prince Georges County to St. Charles City, in Charles County. Applicant's proposed pipeline would approximately parallel U.S. Route 301, which bisects Charles County.

Applicant is and will be regulated by the Public Service Commission of Maryland and will render gas service in Charles County, at the same retail rates under the same conditions prevailing elsewhere in its determined service area. Applicant states that at the present time there is no natural gas service available in Charles County, and, further, only Applicant distributes natural gas in any Maryland county bordering on Charles County.

Applicant states that it has received the necessary authorizations from the Public Service Commission of Maryland and The County Commissioners for Charles County.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 22, 1966 (31 F.R. 926). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the Commission's order issued October 31, 1962, in Docket No. CP62-205 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 31, 1962, in Docket No. CP62-205 is amended to include Charles County, Maryland, in the service area determination made and granted by said order, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

DUKE POWER COMPANY, DOCKET NO. E-7266

ORDER GRANTING REQUEST FOR DECLARATORY ORDER

(Issued February 14, 1966)

Duke Power Company (Duke) a public utility within the meaning of Section 203 of the Federal Power Act, with its principal place of business in Charlotte, North Carolina, by letter dated November 1, 1965, requested the Commission to issue a declaratory order finding that it had no jurisdiction under Section 203 over the acquisition by Duke of the electric power distribution facilities of Clemson University.

In essence, the request calls for a reconsideration of the validity of Section 33.1(2) of the Commission's Regulations under the Federal Power Act, as amended on March 23, 1963 (28 F.R. 2900). The legality of the rule has never been considered in a contested proceeding and we believe that a declaratory order as to the application of Section 203 of the Act and Section 33.1(2) of the Regulations to the present situation would be in the public interest. Scrutiny of the correspondence in our files with regard to the transactions indicates that there is no controversy as to the facts and that letters from Duke of November 1, 1965 and December 16, 1965, can serve as the factual record in this proceeding requesting the issuance of a declaratory order. The Commission believes an exchange of briefs on the issue of law will be of assistance to it in resolving the legal questions presented.

The Commission orders:

The request by Duke for the issuance of a declaratory order as set forth in its letter of November 1, 1965, is granted. Both Duke and the Commission's staff shall file initial briefs on or before March 14, 1966, with any replies they may wish to submit to be filed on or before April 4, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-340; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-263

ORDER TO SHOW CAUSE, CONSOLIDATING AND SETTING DATE OF HEARING

(Issued February 16, 1966)

On September 29, 1965, we issued a Notice of "Petition To Amend" filed by Algonquin Gas Transmission Company (Algonquin) in Docket No. CP65-340.

In said filing Algonquin seeks amendment of the authorization granted by the Commission on August 24, 1965, in Docket No. CP65–340, 34 FPC 572, so as to now construct an additional 23.6 mile 16-inch lateral pipeline from its existing facilities in Connecticut to the vicinity of North Bloomfield, Connecticut, at an estimated cost of $2,887,000. These facilities are proposed to be used essentially to deliver to The Hartford Gas Company (Hartford), an existing customer of Algonquin, volumes of gas previously authorized to be delivered through other facilities authorized in our above-mentioned order of August 24, 1965. However, the capacity of the proposed new line appears to be considerably greatly in excess of Hartford's needs as projected over the next three-year period for the area involved.

The new area proposed to be served by Hartford, through use of the volumes to be delivered off of the proposed Algonquin lateral, is presently traversed by Tennessee Gas Transmission Company (Tennessee). Thus the proposed Algonquin lateral would, if constructed, parallel and duplicate the existing 16-inch pipeline of Tennessee. Although it appears that Tennessee could deliver to Hartford, at the very least, the requisite volumes of gas necessary for the immediate institution of service to the new area at a comparatively minor expenditure, no petition to intervene or a competitive proposal was submitted by Tennessee.

In view of (1) the necessity of accurately determining the market requirements of the new area and (2) the related impact on the economic feasibility of the proposed lateral when viewed, particularly, in juxtaposition to our previous authorization herein for the construction of other facilities requested by Algonquin so as to enable it to deliver to Hartford the very volumes it now seeks to utilize to prove up the economics of the proposed lateral construction, we conclude that the public convenience and necessity requires a formal hearing in these matters and shall so order. Additionally, in view of the possibility that Tennessee could provide any required additional service to Hartford in the North Bloomfield area, without detriment to the present or foreseeable demands of its existing customers, through use of its existing facilities traversing the area, we will now issue and consolidate in such hearing an order to show cause why Tennessee should not be required under Section 7(a) of the Natural Gas Act, to establish a physical connection of its facilities with those of Hartford and to sell to Hartford volumes of gas necessary for the rendition of service to the new area. This show cause proceeding will, of course, not be limited solely to the question of whether Tennessee could provide the service directly to Hartford consistent with the standards of Section 7(a), but should also include the comparative benefits, if any, if such service were to be rendered by Algonquin either by exchange agreement with Tennessee or by transportation by Tennessee for the account of Algonquin.

The Commission orders:

(A) An Order To Show Cause is hereby issued against Tennessee Gas Transmission Company why it should not be required, under Section 7(a) of the Natural Gas Act, to establish a physical connection of its facilities with those of Hartford Gas Company and to sell to said company volumes of gas necessary for the rendition of service to the above-mentioned new area.

(B) Tennessee Gas Transmission Company shall within 15 days of the issuance of this order respond to the "Order To Show Cause" and shall, further, be prepared, upon the hearing date set herein, to present witnesses to testify in regard to matters set forth in said response.

(C) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a consolidated hearing will be held on March 21, 1966, at 10:00 a.m. (EST) in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., respecting the matters set forth in the instant application filed by Algonquin Gas Transmission Company and the Order To Show Cause directed to Tennessee Gas Transmission Company.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PUBLIC SERVICE COMPANY OF INDIANA, INC., DOCKET NO. E-7163

ORDER DENYING REHEARING

(Issued February 18, 1966)

Public Service Company of Indiana, Inc. (PSCI) on January 21, 1966, filed an application for rehearing of our Opinion No. 483 and order issued December 22, 1965, 34 FPC 1513, in the above-entitled proceeding. In Opinion No. 483 we found that PSCI's sales to a number of municipalities and rural membership cooperatives in the State of Indiana are sales at wholesale in interstate commerce and are subject to our jurisdiction under the Federal Power Act. We required PSCI to comply with the filing and posting requirement of the Act.

In its application for rehearing PSCI contends that the Commission failed to discuss several points at issue. Since these points were fully covered in *Indiana & Michigan Electric Company*, 33 FPC 739, Opinion No. 458, Docket No. E-7089, issued April 14, 1965, pp. 746–748, or in *Arkansas Power & Light Company*, 34 FPC 747, Opinion No. 473, Docket No. E-7090, issued September 7, 1965, pp. 751, 752, we thought it sufficient to make reference to the discussion in those opinions, and we have, in effect, incorporated such discussion by reference.

PSCI continues to argue that there are no circumstances which make it manifest that out-of-state energy is being delivered to its municipal and cooperative customers and that such delivery has not been established by engineering and scientific proof. The record is to the contrary. As shown in Opinion No. 483 all of the sales involved here are sales made from an interstate pool and so are sales in interstate commerce subject to our jurisdiction. Furthermore, the Commission staff witness testified that out-of-state energy permeates the entire PSCI system and so is delivered to every cooperative and municipal system served at wholesale. (Tr. 1038–42; Exhs. 48, 49, 50, 51).

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by PSCI in this proceeding present no facts or legal principles which warrant any change or modification of the Commission's Opinion No. 483 and accompanying order.

The Commission orders:

The application for rehearing filed by PSCI on January 21, 1966, is denied.

Commissioner O'Connor *dissenting in part.*

O'CONNOR, *Commissioner, dissenting in part:*

All issues raised in the application for rehearing in this proceeding have been thoroughly discussed; nevertheless, the majority's response today goes further to refer to the limited tracing study placed in evidence. Since it is my opinion that out-of-state energy does not constantly permeate PSCI's system, the majority's reliance upon that tracing study must be examined in detail.

It should be noted that, despite disclaimers to this effect in the majority's earlier opinion, they now determine the better course is to rely on the tracing study. It is not similar to the one utilized in *F.P.C.* v. *Southern California Edison Company*, 376 U.S. 205 (1964), for it does not consider intervening loads. This distinction is not fatal, as I stated before, since we need not resort to a case-by-case determination of each resale customer's jurisdictional status. We have, of course, pursued such a course in determining the jurisdictional status of a public utility's sales for resale. Since there is evidence in this proceeding to demonstrate that large blocks of power flows to major substations in the vicinity of numerous resale customers, federal jurisdiction is clearly required. As to others, however, I am not convinced power necessarily gets through. Unfortunately, there is no thorough consideration of this absence of permeation, so that, while out-of-state power may, at times, reach throughout the system, the preferable manner of resolution is only partial jurisdiction where, at best, insignificant amounts are involved.

Exhibit 48 shows power flows from the out-of-state generator at Paddy's Run up to the Edwardsport area. PSCI's argument as to the operation of the bus-bar at Gallagher raises the possibility that, at times, out-of-state power may not commingle there to flow throughout the system. While it did not present full and complete evidence on the matter, PSCI argued that power would normally flow onto the bus and would then flow immediately onto the transmission line to Edwardsport. The latter line is immediately adjacent to the Paddy's Run line, and it intervenes between all other lines supplied from the Gallagher bus. Furthermore, it raises the likelihood that other intervening connections on that bus-bar may at times carry the power flow from Paddy's Run to points other than to the Columbus substation on the 230-kv line to Wabash River. In any event I am not persuaded that this bus-bar is properly considered a point for tracing purposes.

Exhibit 49 is directed largely to showing flows along the 230-kv lines between Gallagher and Wabash River, the major generators on the PSCI system. This exhibit establishes that there are large flows between two intrastate generators to the exclusion at most times of our sources.

Exhibit 50 shows power flows from the Indiana & Michigan system, in the northernmost part of PSCI's system. At the outset it should be noted this influx is relatively small, with the probable exception of the Huntington substation at the northernmost point. While there is some evidence that out-of-state generators supply I&M in such a manner that they also supply PSCI, that amount is insignificant and only reaches small parts of PSCI's system. Exhibit 50 emphasized primarily that it was impossible for out-of-state power from I&M to reach most points in the northern sector, although it must be conceded that, if the Gallagher and Wabash River bus-bars are properly considered to be a single point, out-of-state power would reach the latter. Thus, during limited periods, it appears out-of-state power might permeate the PSCI system, although under most circumstances it would not.

Exhibit 51 shows the power flows from Cincinnati's Miami Fort station. This exhibit supports the conclusion that points of resale in the southeastern sector are clearly jurisdictional. The supply to the major substation at Batesville is of major proportions; however, the supply to the next substations, on four separate lines from Batesville, are considerably smaller. For the major substation at Columbus there is no supply from Miami Fort during most hours of the day, and it rises at most to a limited supply for short periods. The supply is decreased to less than twenty per cent of that at Batesville, and power flows would presumably reverse a short distance up the line. While Exhibit 49 shows a supply to Wabash River from Gallagher for limited periods, that supply is over the 230-kv lines, not the 138-kv lines from Miami Fort. In my opinion the small interchange between the two lines at Columbus will not suffice to warrant federal preemption.

There is one further feature of the PSCI system which deserves mention, to emphasize the lack of integrated operation. Mr. Leonard testified that the company network is designed to operate either as a loop or a network system; however, the company has opened a number of switches so that its 69-kv lines are operated as a radial system. The witness pointed out that loop operation is to be distinguished from radial operation for in the latter a single line radiates from the power source. Loads are supplied from only one direction. PSCI utilizes this manner of operation to afford less complicated operating conditions, although losing the benefits of increased line capacity. Such segregation into small sectors permits of separate regulation, particularly where it is preferable to restrict federal preemption to those sectors where out-of-state energy is clearly present.

The four exhibits demonstrate, at best, that only small amounts of out-of-state energy may occasionally reach all parts of the PSCI network and its resale customers. In such circumstances we should limit our assertion of authority in deference to the preferences for state regulation in the Power Act.

To summarize, Staff presented three basic theories to support its jurisdictional argument here: first, that PSCI is an integrated system operating in interstate commerce; but it does not exhibit the degree of integrated operation we have previously relied upon, particularly as to shared costs in facility planning. Second, that the pulse and counterflow arguments necessarily result in out-of-state power permeating the system, but there is no satisfactory evidence to support this approach. Third, that a limited tracing study will suffice to support an assertion of complete jurisdiction; however, if state regulation is present federal regulation is not required where, at best, only insignificant amounts of out-of-state energy reach the resale customers. While our discretion in these matters is clearly circumscribed, the showing here is far too limited to persuade me, without more, of the necessity for federal regulation.

I would assert jurisdiction over but a few of PSCI's resales where out-of state energy clearly meets most load requirements. In addition, I reemphasize the need for oral argument here to the end that the company be given a full hearing before the Commission. To the extent indicated in my prior opinion, as further developed above, I dissent to the denial of rehearing.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-265; TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP61-299

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued February 21, 1966)

On March 1, 1965, El Paso Natural Gas Company (El Paso), filed in Docket No. CP61-265 an application together with supplements thereto on March 31 and November 24, 1955, to amend the order of the Commission issued in said docket January 11, 1965, 33 FPC 36, which order authorized El Paso to construct and operate certain natural gas facilities and to deliver natural gas to Transwestern Pipeline Company (Transwestern) on an exchange basis, pursuant to an exchange agreement between the parties dated February 1, 1961.

El Paso seeks amendment of the above order by requesting: (1) authorization to deliver to Transwestern, on an exchange basis, natural gas to be produced from the Feldman A No. 2 well; and (2) vacation of the authorization granted in said order respecting the delivery of gas by El Paso from five other wells never connected to Transwestern's gathering system, all as more fully set forth in the application to amend.

The proposed amendment would reduce El Paso's estimated project cost by $183,600, from $404,081 to $220,481.

On April 23, 1965, Transwestern Pipeline Company (Transwestern), filed in Docket No. CP61–299 an application to amend the order of the Commission issued in said docket, combined with Docket No. CP61–265, on January 11, 1965, which order authorized Transwestern to construct and operate certain natural gas facilities and to deliver natural gas to El Paso Natural Gas Company (El Paso) on an exchange basis, pursuant to an agreement between the parties dated February 1, 1961.

By the instant filing, Transwestern seeks to amend the said order to authorize: (1) The construction and operation of a tap and valve to interconnect Transwestern's existing gathering system with facilities to be constructed by El Paso to connect Feldman A No. 2 well to Transwestern's system, (2) the receipts from El Paso, on an exchange basis, of gas produced from the Feldman A No. 2 well, and (3) the operation of the facilities proposed to be constructed by El Paso for connection of this well, pursuant to the terms of the exchange agreement. Transwestern also seeks the deletion of the authority for the operation of facilities pertaining to five wells and the receipt of gas therefrom, all as more fully set forth in the petition to amend.

The petition states that the estimated cost of the tap and valve to be constructed by Transwestern is $1,280.

The five wells to be deleted from the exchange program have not been connected to Transwestern's system.

Due notice of the filing of the applications to amend and opportunity for hearing have been given by publication in the Federal Register on March 18, 1965, in Docket No. CP61–265 (30 F.R. 3615), and on May 5, 1965, in Docket No. CP61–299 (30 F.R. 6297). No protests, petitions to intervene, notices of intervention or requests for hearing have been filed concerning these amendments.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued January 11, 1965, in Docket Nos. CP61–265 and CP61–299 granting certificate authorizations to El Paso and Transwestern be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that El Paso's Second Revised Sheet Nos. 139 and 140 to its FPC Gas Tariff, Third Revised Volume No. 2, and Transwestern's Second Revised Sheet Nos. 8 and 9 to its FPC Gas Tariff, Original Volume No. 2, to modify the exchange agreement on file as El Paso's Rate Schedule X–12 and Transwestern's Rate Schedule X–1, be accepted for filing effective on the date of issuance of this order.

The Commission orders:

(A) The Commission's order issued January 11, 1965, in Docket Nos. CP61-265 and CP61-299 granting certificate authorizations to El Paso and Transwestern is amended so as to (1) authorize El Paso to construct facilities and deliver to Transwestern on an exchange basis natural gas to be produced from the Feldman A No. 2 well, and to vacate the authorization granted in said order respecting the delivery of gas by El Paso from five other wells never connected to Transwestern's gathering system; and (2) authorize Transwestern to construct and operate a tap and valve to interconnect Transwestern's existing system facilities with facilities to be constructed by El Paso to connect its Feldman A No. 2 well to Transwestern's system, receive natural gas from El Paso on an exchange basis gas to be produced from the Feldman A No. 2 well, and to operate facilities proposed to be constructed by El Paso for connections of said well, pursuant to the terms of the exchange agreement; and to delete from the order authorization for the construction and operation of facilities pertaining to five wells and the receipt of gas therefrom, which have not been connected to Transwestern's system.

(B) In all other respects said order shall remain in full force and effect.

(C) El Paso's Second Revised Sheet Nos. 139 and 140 to its FPC Gas Tariff, Third Revised Volume No. 2, and Transwestern's Second Revised Sheet Nos. 8 and 9 to its FPC Gas Tariff, Original Volume No. 2, to modify the exchange agreement on file as El Paso's Rate Schedule X-12 and Transwestern's Rate Schedule X-1, are accepted for filing effective on the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-164

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued February 21, 1966)

On November 29, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP66-164 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing Applicant to continue the operation of certain facilities, all as more fully set forth in the application.

Applicant states that pursuant to "budget-type" certificate authorization issued in Docket No. G-20051, 23 FPC 287 (1960), it has constructed and placed in operation facilities necessary to receive residue gas purchased from Graridge Corporation, *et al.* (Graridge) at the outlet of Graridge's gasoline plant located in San Juan County, New Mexico, under the terms of a residue gas purchase agreement dated August 25, 1960. These facilities consist of a purchase meter station and a dehydrator located at the outlet of Graridge's said gasoline plant and approximately 211 feet of 4½-inch O.D. pipeline extending from the purchase meter to a point of connection with Applicant's 16-inch O.D. Aneth-San Juan River Plant pipeline.

Graridge has discontinued operation of its gasoline plant. As a result thereof, Applicant proposes and seeks permission and approval to abandon all of such facilities except that terminal 11 feet of pipeline connecting with the Aneth-San Juan River Plant pipeline.

The direct sale and delivery of gas was initiated by Applicant to El Paso Natural Gas Products Company and continued to Shell Pipe Line Corporation, successor to El Paso Natural Gas Products Company, for use in a pumping station in San Juan County, New Mexico, by means of gas first obtained from the Graridge plant and later obtained from the Aneth-San Juan River Plant pipeline. This sale is made by means of a meter situated 11 feet from the Aneth-San Juan River Plant pipeline on the pipeline connecting the Graridge plant. Since gas in the Aneth-San Juan River Plant pipeline is of interstate character, Applicant seeks authorization to continue the operation of the facilities used for the direct sale.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 18, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket No. G–242 (3 FPC 85).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) The proposed operation of facilities as hereinbefore described, and as more fully described in the application and exhibits in this proceeding is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(C) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the operation of facilities as hereinbefore described and as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(D) The certificate issued by paragraph (C) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(E) Applicant shall file with the Commission a conformed copy of the agreement reflecting the terms and conditions of this sale and the delivery of natural gas to Shell Pipe Line Corporation.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE I)

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 21, 1966)

On December 23, 1965, Northern Natural Gas Company (Northern) filed in Docket No. CP64-255 (Phase I) a petition to amend further the Commission's order issued December 21, 1964, 32 FPC 1491, in said docket, as amended June 15, June 18, 33 FPC 1264, 1271, and August 26, 1965, 34 FPC 594, to authorize the construction and operation of certain facilities in Kansas in lieu of certain authorized facilities to be constructed and operated in Nebraska and to authorize an extension of time to December 21, 1966, to construct and place in actual operation such facilities, all as more fully set forth in the petition to amend further.

The order of December 21, 1964, as amended, authorized Northern to construct, among other facilities, 10.6 miles of 30-inch loop pipeline north of its Beatrice, Nebraska, Compressor Station at an estimated cost of $1,189,500 for service to Hanna Mining Company's (Hanna) ore processing plant near Cooley, Minnesota. Northern now requests that it be authorized to construct and operate for service to Hanna 10.8 miles of 30-inch loop pipeline north of Tescott, Kansas, at an estimated cost of $1,194,800.

Northern states that in designing mainline facilities proposed in its pending application in Docket No. CP66-206 to serve the 1966-67 requirements of its present customers consideration was given to the requirements for Hanna and other projects scheduled for construction during 1966. By combining the total requirements of these projects, Northern was able to design larger increments of pipeline and horsepower which results in an overall savings on its system. As a result of such design the facilities required for service to Hanna have been revised so that the new mainline facilities attributable to Hanna are 10.8 miles of 30-inch loop north of Tescott. Therefore, Northern requests further amendment of the order of December 21, 1964, as amended, to reflect these changes in construction.

Further, since service to Hanna is not expected to commence until November 1, 1966, Northern requests that the time within which the main and branchline facilities must be constructed and placed in operation be extended to December 21, 1966. The order of December 21, 1964, provided for a time limit of one year, *i.e.*, to December 21, 1965.

Due notice of the filing of the petition to amend further and opportunity for hearing thereon has been given by publication in the Federal Register on January 8, 1966 (31 F.R. 279). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 21, 1964, as amended, in Docket No. CP64–255 (Phase I) be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 21, 1964, as amended, in Docket No. CP64–255 (Phase I) is further amended to authorize the construction and operation of 10.8 miles of 30-inch loop pipeline north of Tescott, Kansas, in lieu of the 10.6 miles of 30-inch loop pipeline north of Beatrice, Nebraska, heretofore authorized and to extend to December 21, 1966, the time within which to construct and place facilities in actual operation, all as hereinbefore described and as set forth in the petition to amend further.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, CP66–201; SUN OIL COMPANY, G–8592; GULF OIL CORPORATION, G–10827; MARATHON OIL COMPANY, G–11821

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 21, 1966)

On December 20, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP66–201 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce and the delivery of natural gas to United Gas Pipe Line Company (United), all as more fully set forth in the application.

Applicant proposes to sell gas attributable to additional interests in the acreage in the Maxie-Pistol Ridge field from which sales by Applicant to United are now being made. Applicant states that it has acquired the additional interests in this field through the following described assignments:

(1) from Gulf Oil Corporation, dated March 22, 1960;

(2) from Marathon Oil Company, dated August 2, 1965;

(3) from Sun Oil Company, dated August 27, 1965;

Applicant drilled and completed a gas well, the Citizens Bank of Hattiesburg Unit No. 1 No. 4 Well (No. 4 Well), in the Citizens Bank of Hattiesburg Unit No. 1 of the Maxie-Pistol Ridge field, and as a result of Applicant's completing that well as a gas well, Gulf Oil Corporation (Gulf), Marathon Oil Company (Marathon) and Sun Oil Company (Sun) assigned to Applicant the gas rights in the Citizens Bank of Hattiesburg Unit No. 1 hereinafter described.

The assignment from Gulf is limited to gas rights only from the top of the Lower Cretaceous Formation, or from a depth of 8,748 feet (whichever is the greater depth) to a depth of 11,793 feet underlying Lot Nos. 5 and 12 of Section 6, Township 1 South, Range 13 West. The assignment from Marathon was limited to gas rights only to all depths below 8,748 feet or below the base of the Lower Tuscaloosa Formation, whichever is the greater depth. The assignment from Sun was limited to gas rights only from the top of the Lower Cretaceous Formation to a depth of 11,250 feet.

The gas attributable to the overriding royalty interest reserved by Gulf will continue to be sold to United by Gulf under Gulf's FPC Gas Rate Schedule No. 92 and the gas attributable to the overriding royalty interest reserved by Marathon will continue to be sold to United by Marathon under Marathon's FPC Gas Rate Schedule No. 16. The gas attributable to the interest assigned by Sun to Applicant will be sold by Applicant to United under Applicant's existing FPC Gas Rate Schedule No. F–1.

The additional interests assigned to Applicant heretofore were subject to the gas sales contracts which the assignors have with United, as the interests related to acreage within the areas dedicated to United by those contracts.

The Commission has previously issued certificates of public convenience and necessity to Sun in Docket No. G–8592 on January 24, 1956, to Gulf in Docket No. G–10827 on April 22, 1957 and Marathon in Docket No. G–11821 on October 10, 1958, authorizing the sale and delivery of gas under each of the said contracts in the said dockets as follows:

1. *Docket No. G–10827.*—The contract between Gulf Refining Company, predecessor of Gulf Oil Corporation, and United Gas Pipe Line Company, dated July 13, 1956, covering gas produced from the Maxie-Pistol Ridge field, Forrest County, Mississippi, which has been designated as Gulf's FPC Gas Rate Schedule No. 92.

2. *Docket No. G–11821.*—The contract between Ohio Oil Company, the predecessor of Marathon Oil Company, and United Gas Pipe Line Company, dated November 24, 1954, covering gas produced from the Maxie-Pistol Ridge field, Forrest County, Mississippi, which has been designated as Marathon's FPC Gas Rate Schedule No. 16.

3. *Docket Nos. G–8592 and G–10984.*—The contract between Sun Oil Company and United Gas Pipe Line Company, dated March 4, 1955 and August 3, 1956, covering gas produced from the Maxie-Pistol Ridge field, Forrest County, Mississippi, which have been designated as Sun's FPC Gas Rate Schedule Nos. 66 and 77, respectively.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 18, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The sale of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificates of public convenience and necessity issued to Sun in Docket No. G-8592 on January 24, 1956, to Gulf in Docket No. G-10827 on April 22, 1957, and to Marathon in Docket No. G-11821 on October 10, 1958, authorizing the sale and delivery of natural gas be amended so as to conform to the assignments to Applicant from Gulf, Marathon and Sun described hereinbefore.

The Commission orders:

(A) A certificate of public convenience and necessity is issued upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) The grant of the certificate issued herein is upon the condition that no increase in rate shall be filed prior to January 1, 1968, at any price which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy No. 61-1, as amended.

(E) The orders of the Commission issued in Docket No. G-8592 on January 24, 1956, in Docket No. G-10827 on April 22, 1957, and in Docket No. G-11821 on October 10, 1958, authorizing the sale and delivery of natural gas by Sun, Gulf and Marathon, respectively, are amended so as to conform to the assignments executed by said parties to Southern Natural Gas Company, referred to and described hereinbefore.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-290; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-291

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 21, 1966)

On December 28, 1965, Northern Natural Gas Company (Northern) filed a petition, as supplemented on February 14, 1966, and on January 4, 1966, Transwestern Pipeline Company (Transwestern) filed a petition to amend the certificates of public convenience and necessity issued in Docket Nos. CP63-291 and CP63-290, respectively, on October 10, 1963, 30 FPC 997, and amended on September 28, 1964, 32 FPC 863, and August 6, 1965, by extending the time within which Northern and Transwestern may exchange natural gas and by authorizing the construction and operation of certain facilities required for the exchange, as more fully set forth in the petitions to amend, as supplemented.

On October 10, 1963, the Commission issued certificates of public convenience and necessity in Docket Nos. CP63-290 and CP63-291 authorizing the construction and operation of certain facilities and the exchange and delivery of natural gas for one year commencing August 1, 1963. On September 28, 1964, the certificates were amended to authorize the continued exchange until August 1, 1965. On August 6, 1965, the Commission issued a letter-order extending the time for the exchange to September 30, 1965. Pursuant to these orders, Transwestern has delivered 24,029 Mcf to Northern.

Northern and Transwestern have entered into a gas exchange agreement dated December 10, 1965 (superseding the original agreement, as amended, dated April 12, 1963) whereby both parties have agreed to extend the exchange deliveries by Transwestern to Northern through December 31, 1966. Transwestern will deliver and Northern will receive 40,000 Mcf of natural gas on each day, plus additional volumes which Northern may elect to receive, not to exceed 10,000 Mcf per day. Such deliveries will be made through two existing points of interconnection in Hutchinson County, Texas, and Beaver County, Oklahoma, and through two proposed new interconnections in Ochiltree County, Texas.

The agreement of December 10, 1965, further provides that upon the completion of the necessary facilities, Northern will begin redelivering to Transwestern not less than 20,000 Mcf nor more than 50,000 Mcf of gas per day, extending through December 31, 1969, or until such earlier date as the volumes of gas delivered to Northern by Transwestern between August 1, 1963, and December 31, 1966 (less volumes delivered by Northern to Transwestern during the period from December 1, 1965, to December 31, 1966) shall have been redelivered to Transwestern.

Concurrently with the filing of its petition to amend, Northern filed a revision to its Rate Schedule X-9 incorporating the agreement of December 10, 1965.

Northern will construct and operate two 6-inch side valves and check valves at the new interconnections in Ochiltree County, Texas. Transwestern will construct and operate a measuring station and related facilities at each of these new delivery points.

In order to effectuate the redelivery of gas to Transwestern, Northern will construct and operate 7.4 miles of 10-inch pipeline, extending from its Hobbs, New Mexico, Compressor Station to a point on Transwestern's 10-inch Monument Lateral, a measuring station and a gas treating plant, and will make certain gas piping modifications at Hobbs, all in Lea County, New Mexico.

The estimated costs of construction for Northern and Transwestern are $458,900 and $89,670, respectively. Each company will finance the construction from funds on hand.

The exchange of gas assists Transwestern in relieving an oversupply of gas. Northern benefits by receiving gas at points on its system closer to its markets than the point at which it will subsequently redeliver the gas to Transwestern.

Due notice of the filing of the petitions to amend by Northern and Transwestern were published in the Federal Register on January 13, 1966 (31 F.R. 465) and January 21, 1966 (31 F.R. 856), respectively. No protest, petition to intervene, notice of intervention, or request for hearing has been filed in these proceedings.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificates of public convenience and necessity issued to Northern and Transwestern in Docket Nos. CP63-291 and CP63-290, respectively, on October 10, 1963, and amended on September 28, 1964, and August 6, 1965, be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity, as amended, issued to Northern Natural Gas Company on October 10, 1963, in Docket No. CP63-291 is further amended by authorizing the continuation of the exchange of natural gas with Transwestern Pipeline Company and the construction and operation of valves at the new points of interconnection in Ochiltree County, Texas, and of redelivery facilities in Lea County, New Mexico, as hereinbefore described and as more fully described in the petition to amend.

(B) The certificate of public convenience and necessity, as amended, issued to Transwestern Pipeline Company on October 10, 1963, in Docket No. CP63-290 is further amended by authorizing the continuation of the exchange and delivery of natural gas with Northern Natural Gas Company and the construction and operation of two measuring stations and related facilities in Ochiltree County, Texas, and of a side tap and valve, together with related facilities, in Lea County, New Mexico, as hereinbefore described and as more fully described in the petition to amend.

(C) Northern's revision to its Rate Schedule X-9 incorporating the agreement dated December 10, 1965, is accepted for filing.

(D) In all other respects the certificates, as amended, shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FRIO-TEX OIL & GAS COMPANY, DOCKET NO. RI62-195

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued February 23, 1966)

On December 6, 1965, Frio-Tex Oil & Gas Company (Frio-Tex) filed an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving the sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) in Frio County, Texas (Texas Railroad Commission District No. 1) under its FPC Gas Rate Schedule No. 1. The settlement involves a proposed increased rate filed by Frio-Tex from 13.68225¢ to 14.69575¢ per Mcf of natural gas at 14.65 psia, inclusive of tax reimbursement, which was suspended by the Commission for the statutory period and made effective by Frio-Tex on May 1, 1962, subject to refund.

Under the terms of the settlement offer, Frio-Tex proposes to delete the present price escalation provisions from the subject rate schedule and to charge a settlement rate of 15¢ per Mcf of natural gas at 14.65 psia for the remaining term of the contract. Frio-Tex reserves the right to file for three-fourths reimbursement of any taxes levied after December 1, 1965.

Additionally, Frio-Tex reserves the right to file an increased rate up to the applicable area ceiling during the remaining term of the subject contract if such ceiling rate be fixed, after December 1, 1969, at a level above the proposed settlement rate as a result of an area proceeding, or otherwise, as if its contract with Transco had not been amended. Such a reservation is not consistent with the provisions of the Seventh Amendment to the Statement of General Policy No. 61-1, 18 CFR 2.56, insofar as deletion of certain contract provisions are required as a part of a rate settlement.[1] Therefore, we shall condition our approval of the Frio-Tex proposal to require it to delete the price escalation provisions from the subject rate schedule for the remaining term of the contract without reservation regarding possible future increases in the applicable area ceiling for the remaining term of the contract.

We desire to make it clear that the conditional acceptance of the Frio-Tex offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings involving the rate and rate schedule of Frio-Tex.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Frio-Tex on December 6, 1965, and as conditioned herein, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

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[1] *Cf., Warren Petroleum Corporation,* Docket No. RI61-63, 30 FPC 1040.

The Commission orders:

(A) The offer of settlement filed with the Commission by Frio-Tex on December 6, 1965, as herein conditioned, is approved in accordance with the provisions of this order.

(B) Frio-Tex shall file, over the signature of a responsible officer, within 30 days from the date of issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order applicable to it; *provided, however,* that if Frio-Tex should file its acceptance such shall not be binding upon it, without its express agreement, if any other party to this proceeding shall file for reconsideration or rehearing within the statutory period.

(C) Frio-Tex shall file within 45 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf of natural gas at 14.65 psia settlement rate specified in its offer of settlement, and an executed contract amendment to its FPC Gas Rate Schedule No. 1 eliminating all price escalation provision therefrom without reservation, except for possible future changes in tax reimbursement. The notice of change and contract amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(D) Upon notification by the Secretary of the Commission that Frio-Tex has complied with the terms and conditions of this order, the rate and charge of 15¢ per Mcf of natural gas at 14.65 psia sold under its FPC Gas Rate Schedule No. 1, specified in its settlement offer, as herein conditioned, shall be effective as of the date of this order, the proceedings in Docket No. RI62–195 shall be deemed terminated, and the agreement and undertaking filed herein be considered withdrawn, all without further order of the Commission.

(E) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Frio-Tex, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted, including area rate or similar proceedings, by or against Frio-Tex, or any other companies, person or parties affected by this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PACIFIC GAS AND ELECTRIC COMPANY, PROJECT NO. 2310

ORDER APPROVING PROJECT EXHIBIT K DRAWINGS

(Issued February 23, 1966)

On May 4, 1965, Pacific Gas and Electric Company, licensee for Project No. 2310, filed for Commission approval Exhibit J and K drawings showing, among other project works, two unconstructed additional transmission lines to be included in the license (29 FPC 1265) for the project as a part of the project works.

The drawings show: (1) a 115 kv transmission tie line (0.1 of a mile long) between the licensee's Dutch Flat No. 1 power plant of Project No. 2310 and Nevada Irrigation District's Dutch Flat No. 2 power plant under license for Project No. 2266; and (2) a 115 kv transmission tie line (0.8 of a mile long) from Nevada Irrigation District's Chicago power plant of Project No. 2266 to the licensee's Dutch Flat-Halsey Junction 115 kv transmission line of Project

No. 2310. It appears, therefore, that the two lines will connect to licensed hydroelectric projects at either end, and will transmit power only from and to those licensed projects.

We are deferring approval of the Exhibit J drawings, which show the constructed project works, until staff processing of the licensee's pending application for further amendment of the license to include thereunder such constructed project facilities is completed.

Our approval of the Exhibit K drawings (FPC Nos. 2310–83 and –90) will necessitate modification of subparagraph (i) of paragraph (B) of the license to include therein these drawings, and modification of subparagraph (ii) of paragraph (B) to include therein a description of the lines approved by this order as a part of the project works under the license for the project.

The Commission finds:

(1) The two unconstructed, additional transmission lines described in paragraph (C) below are parts of the project within the meaning of Section 3(11) of the Federal Power Act and should be included in the license for the project.

(2) Exhibit K drawings (FPC Nos. 2310–83 and –90) filed on May 4, 1965, conform to the Commission's Rules and Regulations and should be approved as parts of the license for the project to the extent that they show the two additional unconstructed lines described in paragraph (C) below.

The Commission orders:

(A) The license issued to Pacific Gas and Electric Company for Project No. 2310 is hereby modified, effective as of February 1, 1966, to include the unconstructed transmission lines described in paragraph (C) below.

(B) Exhibit K drawings (FPC Nos. 2310–83 and –90) are hereby approved as part of the license for the project to the extent that they show the two additional proposed transmission lines described in paragraph (C) below.

(C) Subparagraph (i) of paragraph (B) of the license for the project is hereby modified to include therein Exhibit K drawings (FPC Nos. 2310–83 and –90), and subparagraph (ii) of paragraph (B) is hereby modified to include the following described unconstructed transmission lines:

Line	*Voltage kv*	*Miles*
Dutch Flat No. 1 power plant to Dutch Flat No. 2 power plant	115	0.1
Chicago Park power plant to Dutch Flat-Halsey Junction	115	.8

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CONTINENTAL OIL COMPANY (OPERATOR), DOCKET NO. RI62–422

ORDER ACCEPTING DECREASED RATE FILING

(Issued February 24, 1966)

Continental Oil Company (Operator) (Continental) on January 24, 1966, tendered for filing a notice of change in rate reflecting a tax reduction in a previously filed rate increase which is now in effect subject to refund in Docket No. RI62–422. The decreased rate filing is set forth in Appendix "A" hereof.

Continental, a producer-respondent in the Permian Basin Opinion No. 468, 34 FPC 159, proposes a rate decrease from 17.2295¢ to 17.0¢ per Mcf, amounting to $3,213 annually, for a plant sale of residue gas derived from casinghead gas to El Paso Natural Gas Company (El Paso) in the Permian Basin Area of Texas. The proposed rate decrease reflects discontinued collection of 0.2295¢ per Mcf tax reimbursement, which Continental states has been collected in error. The increased rate of 17.2295¢ per Mcf, effective subject to refund in Docket No. RI62–422[1] reflects a 1.35% tax reimbursement of the value of all residue gas delivered to El Paso from Continental's Ramsey Plant attributable to casinghead purchased by Continental under percentage type contracts. By letter agreement from Continental dated December 9, 1965, and accepted by El Paso on December 15, 1965, it was mutually agreed that the producers selling to Continental are responsible for all taxes on production delivered to the Ramsey Plant. Continental, as full settlement for the tax reimbursement collected in error, has refunded to El Paso the amount collected.

Since Continental's reduced rate of 17.0¢ per Mcf exceeds the applicable area base rate of 14.5¢ per Mcf prescribed by the Permian Basin Opinion No. 468, we believe that it would be in the public interest to accept for filing the proposed tax decrease effective as of February 24, 1966, the date of expiration of the statutory notice, subject to refund in the existing suspension proceeding in Docket No. RI62–422.

Except for the stay of Opinion Nos. 468 and 468–A, 34 FPC 1068, granted to Continental, among others, by order issued January 20, 1966, in *Skelly Oil Co.* v *F.P.C.* (CA10, No. 8385, *et al.*), the decreased rate filing made here by Continental would be rejectable under the moratorium provisions in Opinion No. 468 because it exceeds the applicable area rate ceiling determined in Opinion Nos. 468 and 468–A. If the Commission's moratorium on rate increases is ultimately upheld upon judicial review, then the subject rate filing will be rejected *ab initio*.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept for filing the proposed tax reimbursement rate decrease filing, designated as Supplement No. 3 to Continental's FPC Gas Rate Schedule No. 168, effective as of February 24, 1966, subject to the existing rate suspension proceeding in Docket No. RI62–422 and refund obligation related thereto.

The Commission orders:

The tax reimbursement decrease, designated as Supplement No. 3 to Continental's FPC Gas Rate Schedule No. 168, is accepted for filing, effective as of February 24, 1966, subject to the existing rate suspension proceeding in Docket No. RI62–422 and refund obligation related thereto.

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[1] Docket No. RI62–422 is consolidated in the "Order to Show Cause" (34 FPC 424) issued concurrently with the Permian Basin Opinion No. 468.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual decrease	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed decreased rate	
RI62-422	Continental Oil Co. (Operator) Post Office Box 2197 Houston, Tex. 77001 Attn: Messrs. Fred T. O'Leary and Bruce R. Merrill.	168	3	El Paso Natural Gas Co., (Geraldine Ford Area (Ramsey Plant), Reeves and Culberson Counties, Tex.) (R.R. District No. 8) (Permian Basin Area).	$3,213	1-24-66	[1] 2-24-66	----------	17.2295	[2] [3] 17.0	RI62-422.

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[1] The stated effective date is the 1st day after expiration of the required statutory notice.

[2] Tax reimbursement rate decrease.

[3] Pressure base is 14.65 p.s.i.a.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

KNOXVILLE UTILITIES BOARD, ET AL. v. EAST TENNESSEE NATURAL GAS COMPANY, RP65-4; MIDWESTERN GAS TRANSMISSION COMPANY, RP61-19, RP62-7 (REOPENED)

ORDER SETTING CONSOLIDATED ORAL ARGUMENT IN LIBERALIZED TAX DEPRECIATION ISSUE; DENYING MOTION AND CANCELLING ORAL ARGUMENT

(Issued February 24, 1966)

The Independent Natural Gas Association of America (INGAA) petitioned, on January 25, 1966, for intervention in East Tennessee Natural Gas Company (East Tennessee), Docket No. RP65-4, for the limited purpose of requesting the Commission to defer oral argument and decision on the issue of the proper rate treatment of liberalized tax depreciation benefits in that proceeding until after that issue is argued and decided in Midwestern Gas Transmission Company (Midwestern), Docket Nos. RP61-19 and RP62-7, or in the alternative, to permit its participation in the oral argument on that issue in the East Tennessee proceeding.

Oral argument on all issues in the East Tennessee case is presently scheduled to be held on February 25, 1966. Both East Tennessee and Midwestern present the issue of the proper treatment of liberalized tax depreciation deductions in fixing the rates of a pipeline which discontinues such rapid tax depreciation. As presently scheduled, the East Tennessee proceedings would be submitted for final decision before the similar issue in Midwestern can be argued. Accordingly, INGAA further requests that if the motion for such partial deferment is denied, it be permitted to participate with respect to this single issue in the oral argument to be held on February 25, 1966.

Knoxville Utilities Board, *et al.* (Knoxville) filed an answer opposing INGAA's request, on February 4, 1966. Knoxville asserts that the Commission has never made manifest any intention that the Midwestern proceeding should serve as a pilot case for decision on this issue and points out that INGAA has failed to excuse or justify the tardiness of its petition to intervene in the instant proceeding. Knoxville further argues that the jurisdictional customers will be irreparably injured by any delay in the issuance of a final order reducing East Tennessee's rates since any such action can only be made prospectively effective.

While INGAA has not timely petitioned for intervention in the East Tennessee proceeding, we believe that since the underlying fundamental questions of policy and law presented in these two cases on the liberalized depreciation issue are identical, the contemporaneous consideration of those questions, based on respective evidence presented in the two cases, will greatly aid the Commission's determination of this important issue. Accordingly, we are of the view that it is appropriate and necessary that there be a consolidated oral argument of the liberalized depreciation flow-through issue presented by these rate proceedings. It is our intention that each of the parties shall argue only the facts of the particular proceeding in which it is a party in interest or an intervener.

Our action in this regard will not postpone or delay final decision of the other issues in the East Tennessee proceeding. Upon reconsideration of the nature and scope of those issues, we believe that they have been fully briefed and that oral argument thereon is unnecessary. Accordingly, we are hereby cancelling the oral argument previously scheduled for February 25, 1966.[1]

The Commission orders:

(A) A consolidated oral argument shall be held in Docket No. RP65-4, and Docket Nos. RP61-19 and RP62-7 (reopened) before the Commission *en banc* commencing at 10:00 a.m., April 5, 1966, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., on the issue of the proper rate treatment of the liberalized tax depreciation deductions available to East Tennessee and Midwestern which have reverted to straight-line depreciation.

(B) All parties desiring to participate in such oral argument shall notify the Secretary on or before March 4, 1966 of the amount of time desired for presentation of their arguments.

(C) The oral argument previously scheduled to be held on February 25, 1966, in the East Tennessee proceeding, Docket No. RP65-4, is cancelled.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE MONTANA POWER COMPANY, PROJECT NO. 5

ORDER APPROVING AGREEMENT AND PRESCRIBING PRINCIPLES AND PROCEDURES FOR REGULATION OF FLATHEAD LAKE

(Issued February 24, 1966)

On May 31, 1962, The Montana Power Company, licensee for the Kerr hydroelectric development, Project No. 5, on the Flathead River in Montana, and the Corps of Engineers entered a memorandum of understanding which set forth principles and procedures for regulation of Flathead Lake, the storage reservoir of the Kerr development, in the interests of flood control. The agreement, as amended on October 15, 1965, was filed on October 19, 1965, for approval by the Commission under Article 21 of the Kerr license, providing:

> The operations of the Licensee in so far as they affect the use, storage, and discharge from storage of the water of Flathead Lake, shall at all times be controlled by such reasonable rules and regulations * * * as the Federal Power Commission may prescribe in the interests of flood control and the fullest practicable utilization of the waters of Flathead River and Clark Fork for power, irrigation, and other beneficial uses.

The amended agreement provides in general that: (1) The Licensee and the Corps of Engineers will cooperate in exchanging data and coordinating operations for flood control. (2) Conditions permitting, the lake will be drawn down to elevation 2883 feet, the minimum level under the license, by April 15th and will be raised to elevation 2890 feet by Memorial Day (May 30th) and to elevation 2893 feet, the maximum level under license, by June 15th. (3) When the lake reaches elevation 2886 feet, in a moderate or major flood year, the Licensee will gradually open its spill-gates to maintain free flow and will not close the gates until after the danger of exceeding elevation 2893 feet has passed.

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[1] Notice Fixing Oral Argument issued November 18, 1965.

The amended agreement has been endorsed by both the Flathead Lakers, Inc., an association of lakeside residents who are interested in having the lake level brought up to the maximum under license as soon in the recreation season as possible, and the Upper Flathead Valley Flood Control Association, an organization of farm owners at the upper end of the lake who are interested in having the lake level kept down to prevent innundation of their lands by late floods. At a conference held in Missoula, Montana, on September 28, 1965, attended by representatives of these two landowners' groups, the licensee, the Corps of Engineers, and the Commission, various differences were settled, and the terms of the settlement were incorporated into the agreement by the amendment of October 15, 1965.

The Commission finds:

The memorandum of understanding of May 31, 1962, as amended October 15, 1965, between The Montana Power Company and the Corps of Engineers provides satisfactory principles and procedures for regulation of Flathead Lake in the interest of flood control, power, recreation, and other beneficial public uses.

The Commission orders:

Until further order of the Commission, the principles and procedures for regulation of Flathead Lake contained in the aforesaid memorandum of understanding are approved and are prescribed under Article 21 of the license for The Montana Power Company's Kerr development, Project No. 5.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, ET AL., DOCKET NO. CP62–243, ET AL.; TRUNKLINE GAS COMPANY, DOCKET NO. CP66–171; MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. G–863

NOTICE OF APPLICATIONS, SUPPLEMENTS AND AMENDMENTS TO APPLICATIONS, ORDER CONSOLIDATING AND ORDER DENYING STAFF'S MOTION

(Issued February 24, 1966)

On December 1, 1965, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri, filed a "Supplement to and Amendment of Applications and Motions to Amend Certificates of Public Convenience and Necessity". In essence, Mississippi seeks to amend its filing in Docket No. CP62–242 so as to receive authorization for the receipt, transportation and delivery to customers of natural gas in interstate commerce 100,000 Mcf per day instead of the heretofore requested 65,000 Mcf per day.

Mississippi proposes to purchase a total of approximately 65,000 Mcf per day from Natural Gas Pipeline Company of America (Natural). Deliveries to Mississippi by Natural will be effectuated through use of the emergency interconnection granted by the Commission order in Docket No. CP61–339. To this end both Applicants seek modification of the order issued in Docket No. CP61–339 so as to permit the use and operation of their respective, separately owned portion of the facilities, for delivery by Natural and receipt by Mississippi of natural gas on a firm basis. Delivery of the 65,000 Mcf per day is proposed to be commenced on November 1, 1966, and is inclusive of the 35,000 Mcf per day presently being delivered by Natural to Mississippi under temporary authorization.

Mississippi also proposes to purchase an additional 35,000 Mcf per day from Trunkline Gas Company (Trunkline) effective November 1, 1966, and to transport and sell said volume to its existing customers. Trunkline will deliver the gas at its existing interconnection with Mississippi in Clay County, Illinois.

Further, Mississippi seeks amendment of its certificate issued in Docket No. G–863 so as to be authorized to transport and sell firm gas to Mississippi Lime Company, an existing direct interruptible customer.

Mississippi does not propose to construct any facilities. The supplement and amendment recites that it has unused capacity in excess of that required to meet its present commitments, and that no new facilities are required for the purchase of the above volumes from Natural and Trunkline or for the transportation of said volumes for delivery and sale to Mississippi's existing customers.

On December 1, 1965, Natural, 122 South Michigan Avenue, Chicago, Illinois, filed an amendment to its applications in Docket Nos. CP62–243 and CP63–99 so as to reflect the revised facilities necessary for Natural to deliver and sell to Mississippi the heretofore referred 65,000 Mcf per day. Specifically, Natural proposes to construct approximately 52.71 miles of 36-inch loop pipeline and to install 20,400 horsepower of compression at various existing compressor stations along its Gulf Coast line. The estimated cost of $13,245,000 will be financed through interim and permanent financing more fully described in the amendment. Finally, in conjunction with its motion to amend the authorization granted to Natural in Docket No. CP61–339, Natural requests authorization for the cancellation of its Rate Schedule X–9.

On December 1, 1965, Trunkline, a Delaware corporation having its principal office in Houston, Texas, filed an application seeking authorization to construct and operate certain facilities so as to enable it to deliver and sell to Mississippi an additional volume of 35,000 Mcf per day commencing November 1, 1966. The sale will be made pursuant to Trunkline's P–1 Rate Schedule.

Specifically, Trunkline proposes to construct and operate (1) approximately 31.6 miles of 36-inch O.D. pipeline to loop portions of its existing main transmission lines between Longville, Louisiana and Tuscola, Illinois, (2) 3,000 additional horsepower at existing main line Compressor Station No. 48, Longville, Louisiana, and (3) 1050 additional horsepower at existing main line Compressor Station No. 84, Independence, Mississippi. The proposed facilities, which will increase the transmission capacity of Trunkline's pipeline system to 1,070,000 Mcf per day, are estimated to cost $6,500,000 and will be financed through short-term bank loans to be repaid by internally generated funds or from other sources. On December 2, 1965, Trunkline filed a motion seeking consolidation of its instant application with those in the proceeding in Docket No. CP62–243, *et al.*

On December 10, 1965, the Commission staff, relying in part on Opinion 474, 34 FPC 771, issued in the Docket No. CP62–243, *et al.*, proceeding, filed a motion opposing, in part, the instant Natural-Mississippi-Trunkline proposal and requesting denial of Trunkline's motion to consolidate. We believe this motion should be denied.

It is unfortunate that there is not now pending an application to deliver gas to Mississippi at St. Louis. However, contrary to the implication in the dissent, the Natural Gas Act does not give this Commission the authority to compel the enlargement of transportation facilities. In the light of this situation, we are not prepared to gamble with the interests of the gas consumers of St. Louis by exercising whatever leverage may be useful for the purpose of goading the parties to file the kind of application we might prefer. Even if the Commission were eventually successful in extracting such an application, there is no assurance that it could be granted timely, or even that it should be granted.

The grave risks involved in the gamble suggested by the dissent are disclosed in the answers to Staff's motion filed by several parties, including gas consumers in St. Louis who supported the application of Oklahoma-Illinois, all of who allege an imperative need for additional volumes of gas in St. Louis during the forthcoming winter season of the total magnitude proposed in the instant applications of Mississippi, Natural and Trunkline.[1]

Perhaps the basic misunderstanding inherent in the dissent is the notion that these applications constitute a settlement which the Commission, by its action here, is approving. This is not the case. We are not now making a final determination of the merits or demerits of these applications in advance of hearing. The time for making that decision is after, not before the evidence is in and the parties have been heard. Only then will the Commission grant or deny these applications, in whole or in part, with or without conditions as the public interest may require. This order simply permits the case to proceed. Properly understood, our decision does not preclude staff from fulfilling its responsibilities of considering alternative means of satisfying the needs of the St. Louis market which may be in the public interest. Thus, we think that our decision is consistent with *Scenic Hudson Preservation Conference* v. *F.P.C.*, 354 F. 2d 608 (CA2–1965) in contrast to the dissent which would not permit one of the applicants, *i.e.* Trunkline, an opportunity to demonstrate that its application is consistent with the public interest.

The dissent further infers that the effect of granting these applications will forever bar the provision of competitive service to St. Louis of the type contemplated in the previous opinion. We have no basis for such a determination at this preliminary stage of the proceeding. In this connection, we will require a showing, in this case, whether a grant of the subject applications would prejudice or preclude the provision of such service. Additionally, it is conceivable that one or more of the parties may see fit to file a new application at some future date seeking to change the delivery point of the volumes proposed in the instant applications to a point within St. Louis, as well as to provide whatever additional volumes of gas may be required beyond the immediate forthcoming winter heating season.

Without necessarily disagreeing with Commissioner Black's commentary on Panhandle's representations in these proceedings, it is apparent that Panhandle has declined to prosecute its application in Docket No. CP63–106 in favor of supporting that of Trunkline, its affiliate, in Docket No. CP66–171. Accordingly, Panhandle's aforementioned application will be dismissed and Trunkline's application will be consolidated. The case should proceed to hearing forthwith in accordance with this determination.

Lastly, in view of (1) the merger of Mississippi River Fuel Corporation with Mississippi Transmission subsequent to the commencement of the proceedings in Docket No. CP62–243, *et al.*, and (2) our instant action and that taken in Opinion No. 474, the matters presented by the following applications are moot and consequently are deemed closed:

> Mississippi River Transmission Corporation, Docket No. CP62–76. Mississippi River Fuel Corporation, Docket No. CP61–341. Panhandle Eastern Pipe Line Company, Docket No. CP63–106.

The Commission orders:

(A) The Commission staff's motion filed on December 10, 1965, in the proceedings in Docket No. CP62–243, *et al.*, is denied.

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[1] It is significant that the volumes shown as required substantially exceed those more limited volumes accepted in the original opinion.

(B) The application of Trunkline in Docket No. CP66–171 and that of Mississippi for amendment of its authorization in Docket G–863 are hereby consolidated with the proceeding in Docket No. CP62–243, *et al.*

(C) The proceedings on the applications of Mississippi River, Docket No. CP61–341, and Mississippi Transmission, Docket No. CP62–76 are deemed closed without the grant of any of the authorizations sought therein. The application of Panhandle in Docket No. CP63–106 is hereby dismissed.

(D) Protests or petitions to intervene by any party, including those already a party to the proceeding in Docket No. CP62–243, *et al.*, should be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (157.10) on or before March 7, 1966.

(E) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held on March 14, 1966, at 10:00 a.m. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., respecting the matters set forth in the instant order.

Commissioner Black *dissenting.*

BLACK, *Commissioner, dissenting:*

I would grant Staff's motion to dismiss the proposals of Natural, Mississippi and Trunkline and, as Staff has requested, permit Natural to submit a proposal in accordance with its offer to supply the full increased requirements of Mississippi for the St. Louis market. Such a proposal should include provision to deliver gas within the St. Louis area. By its action today the Commission is providing for an obviously inferior method of bringing additional gas to St. Louis, and at a substantially higher price than necessary.

The majority of the Commission, in its brief order, has treated this action as routine, and with no discussion of the issues lightly tosses aside our Opinion No. 474 and the whole purpose for which we ordered the remanded proceedings. Today's order is a total repudiation of our earlier action and the parties to this proceeding and the citizens of St. Louis are entitled to an explanation. But the majority apparently has none it can provide in good conscience.

This case was instituted by Natural in July 1962 by its application to supply Mississippi with increased volumes of gas for the growing needs of St. Louis. Oklahoma-Illinois and Panhandle thereafter entered the contest and this Commission consolidated the applications for comparative hearing. The proceedings consumed three months of hearings, 14,155 pages of testimony and 249 exhibits and was strongly contested by all parties. An Examiner's opinion was issued on September 10, 1964. After oral argument on December 15, 1964, the Commission took the case under deliberation and nine months later issued our Opinion No. 474. We determined that in the special circumstances of this case the public convenience and necessity required certification of a second pipeline supplier *directly into St. Louis, Missouri.* Our decision, after several years of effort by the parties, the Examiner, and ourselves, was not an impulsive one. It is discouraging to see it scuttled without so much as a murmur of regret.

A majority of the Commission disagreed with the Presiding Examiner's conclusion that the Oklahoma Illinois Gas Pipeline Company's project could best accomplish the objective of bringing pipeline competition to St. Louis. Instead, after agreeing with the Examiner that Panhandle and Natural had not sustained their burden of proof in regard to their respective applications, we found that either of those proposals would, in the event the evidentiary deficiencies were corrected, be a proper vehicle for the requisite introduction of potential pipeline competition in the St. Louis area, provided Panhandle or Natural proposed facilities for delivering gas directly into the St. Louis environs. We had this to say:

> We well might find that approval of Panhandle's project would provide the necessary additional gas supplies, but that Mississippi should continue to serve as the prime supplier in the St. Louis area subject to our jurisdiction. It seems clear that certification of such a project as Panhandle would have a potent competitive effect in the area. And should our regulatory efforts fail to preclude recurrence of past events, the presence of the second supplier would make available the possibility of an effective remedy. (Opinion No. 474, p. 786.)
>
> * * * Natural's proximity to the St. Louis market and the certification of its proposed sale to Mississippi might still deny the St. Louis area the benefits of competition, since Natural under its existing proposal would make deliveries only into Mississippi's facilities some 50 miles away from St. Louis, and could not compete directly with Mississippi for customers in the St. Louis area. * * * In the further proceedings, Natural should examine the feasibility of providing facilities for delivery of the gas at a point more convenient to the St. Louis market area. (Opinion No. 474, p. 785.)

Consistent with the foregoing observations we remanded the proceeding to the Examiner for further hearings to afford Panhandle, Mississippi, and Natural an "opportunity to substantiate their proposals for pipeline projects to serve natural gas to the St. Louis area, in conformity with this opinion and order." (Opinion No. 474, p. 786.) Further, in recognizing that since the close of the record Panhandle and Natural had been authorized to render service to areas other than those proposed to be served under the applications filed herein by means of some of the facilities covered by such applications, we required Panhandle and Natural to modify or amend their respective applications so as to prescribe such additional facilities as may be necessary to render service to the St. Louis area. (Opinion No. 474, pp. 786–787.) Lastly, after reciting that:

> (1) The present record overwhelmingly showed that Mississippi, in the past, failed to satisfy obligations to the gas-consuming public;
>
> (2) The present record clearly established that Mississippi's industrial market requirements were computed without consultation with the customers themselves; and
>
> (3) Mississippi's pricing practices with its industrial customers were characterized in part at least by considerations of what the market will bear;

we concluded as follows:

> * * * we consider it necessary that in the remanded proceedings Mississippi establish that in fact it is ready, willing, and able to fulfill its present and future obligations to render all needed service at just and reasonable rates to both its industrial and utility customers. (Opinion No. 474, p. 785.)

In Opinion No. 474, we made it abundantly clear that in the remanded proceeding effectuating the minimal requirement of bringing potential pipeline competition directly into St. Louis would be limited to the remaining applicants in this proceeding, namely, Mississippi, Natural, and Panhandle, provided amendatory filings were submitted. Mississippi and Natural are the only applicants who complied with the terms of our order on the day designated by the Examiner. Panhandle's "Statement of Position" filed in support of the application of its subsidiary, Trunkline, cannot be construed as a substitute for its deliberate failure to prosecute its application in this proceeding; it clearly is not in keeping with our previous Opinion in this proceeding to permit Panhandle to keep on file a defective application to provide direct service to St. Louis. Accordingly, I concur in today's action in dismissing Panhandle's application in Docket No. CP63–106. We should also deny Trunkline's motion to consolidate its application in Docket

No. CP66–171 with the applications in the instant proceeding. Pursuant to the provisions of Section 157.11(a) of the Regulations under the Natural Gas Act, Trunkline's application to deliver gas to Mississippi for service of the St. Louis market having been filed long after the original hearing on Mississippi's and Natural's applications, is not entitled to be heard until final decision is rendered on the earlier applications, unless the public interest otherwise requires. Since the Trunkline application (1) would provide gas to Mississippi at an appreciably higher price than that at which Mississippi would obtain gas from either Natural or Panhandle (under its original proposal here), (2) does not provide for any pipeline competition in or near St. Louis, and (3) will only take care of about one-third of Mississippi's presently estimated third-year requirements, I think it clear that no showing that the public interest requires its simultaneous consideration can be made.

In so concluding, I am, of course, aware that by giving favorable consideration to Trunkline's application it will, pursuant to its agreement with Mississippi and Natural, withdraw any opposition it might otherwise have to the grant of the latters' joint application to provide 65,000 Mcf per day of gas to the St. Louis area. I am confident, however, that, assuming the Mississippi-Natural proposal is otherwise in the public interest, action could be taken to authorize such service in more than adequate time to take care of the 1966–1967 winter period. And we certainly are remiss in our obligations where we permit service to be forced on the St. Louis area by a method which we have explicitly found to be inconsistent with its special needs, simply to avoid a hearing on another proposal, particularly since in the earlier stages of the proceeding Panhandle was utilized as a front for Trunkline's belated entry into the picture as an applicant.

It is urged that the 35,000 Mcf per day proposed to be provided by the Trunkline application is also needed for the 1966–1967 heating season in order to prevent curtailment of service to industrial users in the St. Louis area. In my view their needs can better be taken care of as part of a more comprehensive proposal to serve the growing needs of St. Louis for the next three-year period, an increment in gas supply which, if Mississippi's figures are reliable, should be more than sufficient to support new pipeline facilities providing a real degree of competition to the St. Louis area. In furtherance of this objective, I would take no action on the new trunkline application at this time, to permit it and all other interested parties to prepare and file applications consistent with these views. We should also defer, until we have a better picture of alternative proposals, questions of possible additional temporary authorizations to provide extra service to St. Louis for the 1966–1967 winter.

What I have said above also requires that no consideration be given in this remanded proceeding to that portion of Mississippi's supplement and amendment of December 1, 1965, to its applications previously filed herein, encompassing a proposal to acquire an additional 35,000 Mcf per day from Trunkline.

This brings me to Natural's amendment of December 1, 1965. This amendment, which is consistent with Natural's original proposal to sell 65,000 Mcf per day of gas to Mississippi at a junction some 50 miles east of St. Louis, is procedurally in compliance with Opinion No. 474. Although Natural has not seen fit to submit a proposal reflecting deliveries of gas directly into the St. Louis area, it has expressed a willingness to so do should the Commission so require. (Natural's answer of December 20, 1965, to staff's motion.) In view of the fact that a substantial portion of the 65,000 Mcf per day is required to meet the 1966–1967 requirements of Mississippi's jurisdictional customers, and the urgings of the St. Louis utilities that further prolonged competitive proceedings at this time might delay certification of the facilities required to meet these requirements, we should order further proceedings upon the Natural application, as amended (together with the associated Mississippi applications), and could expeditiously dispose of the pending request for 65,000 Mcf per day. We could yet accomplish the stated objective of Opinion No. 474 with respect to (1) the authorization of further facilities which is now admitted will be required to meet St. Louis' needs for the 1968–1969 season and (2) the introduction of potential pipeline competition into the St. Louis market.

The majority contends that I misunderstand today's action; that it constitutes neither a settlement nor a final determination on the merits. This is perhaps technically correct, but most naive. The practical effect of today's order is to preclude staff from fulfilling its responsibilities of developing, on a record, the alternative means of service suggested by the public interest and by Natural Gas Pipeline Company itself. The majority tacitly recognizes this, for it suggests that consideration of staff's motion would involve a gamble with the gas supply needs of the St. Louis market. It is unfortunate that today's majority has forgotten so soon the admonition of the U.S. Court of Appeals for the Second Circuit in *Scenic Hudson Preservation Conference* v. *F.P.C.*, 354 F. 2d 608 (CA2–1965):

> In this case, as in many others, the Commission has claimed to be the representative of the public interest. This rule does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission. * * * The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts.

Contrary to the view of the majority, the protection of the public interest involves no gamble. As this record establishes, there is no need for this Commission to sit idly by while Mississippi, Panhandle and Trunkline use the gas supply needs of the St. Louis consumer to guarantee each other's freedom from competition. Indeed, the question of our lack of authority to compel the enlargement of transportation facilities, which the majority argues justifies today's action, is not germane. On the present record, Natural has already agreed to construct whatever facilities the Commission finds necessary in the public interest. The practical effect of today's order, however, is to so fragment the gas supply of the St. Louis area as to insure that the construction of the facilities necessary for direct competition with Mississippi will not be economically feasible for the foreseeable future.

Whatever the consequences of the Commission's action may be in their effect on the parties to this case and the consumers of the St. Louis area, the more sobering implications concern the integrity of the administrative process itself. Today's action is this agency's demonstration to Panhandle Eastern Pipe Line Company and others with similar inclinations, that we will reward bad faith in a party's conduct and representations before the Federal Power Commission.

Panhandle very effectively misled the Commission into the belief that it offered a *bona fide* proposal to provide direct pipeline service into the St. Louis area. At four points in its oral argument to the Commission on December 15, 1964, counsel for Panhandle argued that on a comparative basis Panhandle's application should prevail over Natural's because it (Panhandle) proposed service directly into the St. Louis market in contrast to Natural's point of delivery fifty miles away. (Hearings, volume 97, pages 14014–14015, 14020, 14021, and 14023.)

For example, at page 14023 of the Hearings, counsel advised the Commission as follows:

> Mississippi's position has been ambivalent. They do not object to our providing them the gas if we only won't come into the market area to give it

> to them. They would rather buy 50 miles away and haul it through the line. They say they have idle capacity in the line. I can't possibly see any advantage in buying gas at a little higher price from Natural 50 miles away and use up their spare capacity when we are willing to put it right down there to them.

It is now apparent, of course, that Panhandle never intended to provide the service for which it sought a certificate. Instead, it used the administrative process as a device to protect the interest of its subsidiary in the St. Louis market, with arrogant disregard of the interest of the public to be served. Taking full advantage of the long period of time these difficult proceedings have consumed, Panhandle makes good use of the imminent need of St. Louis for increased gas supplies as leverage to force our approval of its "settlement" with the other parties. Mississippi, while paying more for Trunkline gas than for Natural's, gains freedom from any competitive threat to its monopoly in the St. Louis area. Natural, for its part, is bought off by Panhandle's promise to withdraw its opposition to the Natural-Mississippi application. Everyone benefits except the St. Louis consumer, who is being used as a pawn in this high-handed division of the market. I express the greatest regret that my colleagues should not act in a forthright fashion to protect the public interest.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. RP66-21

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued February 24, 1966)

Panhandle Eastern Pipe Line Company (Panhandle), on January 6, 1966, tendered for filing an "Agreement as to the Rates of Panhandle Eastern Pipe Line Company" (Exhibit A attached hereto*) wherein it proposes to reduce its rates subject to the jurisdiction of the Commission, and concurrently tendered certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1,[1] to reflect such reductions. Panhandle proposes to reduce its straight-line rates and the commodity component of its two part rates by 0.4¢ per Mcf, effective as of October 1, 1965. The total reduction approximates $2,100,000 per year based on estimated jurisdictional sales for the 1966 calendar year. That amount is the aggregate of a $750,000 reduction per year in Panhandle's costs plus the impact of the lower purchase gas cost from Trunkline resulting from a Commission order issued today in Docket No. RP66-20, Trunkline Gas Company, *infra*, p. 268.

The proposed rate reductions reflects estimated 1966 operations. The cost-of-service resulting therefrom is summarized in Exhibit B hereof.

The rate reduction proposal has resulted from conferences with the Staff as a consequence of the Commission's continuing supervision of natural gas companies and the periodic review of the reports filed with the Commission by such companies. Notice of the filing was issued on January 14, 1966. Only one comment thereon has been received. By letter dated January 24, 1966, the Public Service Commission of Missouri informed the Commission that the settlement of the proceeding on the basis proposed would be in the public interest.

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*Omitted in printing.

[1] Second Revised Sheet No. 26-E; Third Revised Sheets Nos. 26-A and 26-B; Eight Revised Sheets Nos. 4, 7, 10, 13, 14, 16, 17, 19, 20, 22, 29 and 31; Ninth Revised Sheet No. 27; and Twelfth Revised Sheet No. 25.

In addition to making the reduced rates effective as of October 1, 1965, the aforementioned Agreement provides:

(1) Panhandle will refund to its jurisdictional customers, without interest, the difference between the amounts billed and collected under the currently effective rates and the amounts which would have been collected under the rates set out in the Agreement, for gas sold and delivered from and after October 1, 1965.

(2) Panhandle, in addition, will refund the jurisdictional portion of the refund received from Trunkline Gas Company as a result of an order issued concurrently herewith in Docket No. RP66–20. Panhandle's refund will be apportioned among its jurisdictional customers on the basis of volumes purchased by them during the period extending from October 1, 1965 through December 31, 1965 as detailed in Article 3 of the agreement.

(3) The reduced rates set out in the Agreement reflect an allocation of costs relating to the deliveries of shrinkage and fuel to National Helium Corporation. The Commission may examine that issue in the course of future rate proceedings. However, during the period that the rates contained in the Agreement remain in effect, no further adjustment will be made to Panhandle's rates or tariff on the basis of the effects of Panhandle's deliveries to that Corporation, whether as a result of certificate proceedings or otherwise. Nothing contained in this Agreement shall be deemed to resolve or moot any other issue presented in Docket No. CP63–159.

(4) Panhandle's existing obligations to flow through gas supplier refunds, as provided in Commission's orders issued July 20, 1962, in Docket No. G–14755, *et al.*, 28 FPC 200, and March 30, 1964, in Docket No. RP64–18, 31 FPC 736, are continued during the period of this Agreement, all as more fully prescribed in Sections 1 and 2 of Article V of the subject Agreement and Appendices B and C thereof. In addition, with respect to gas purchased on and after October 1, 1965, Panhandle will flow through the jurisdictional portion of all refunds received from its suppliers all of which is more fully detailed in Section 3 of Article V of said Agreement and Appendix D thereof. Said refunds will be made within 45 days of the time that the accumulated undistributed refundable amount totals $250,000.

(5) During the period in which the rates provided for in the subject Agreement remain in effect, Panhandle will reduce its rates to reflect the reduction in rates of its suppliers listed in Appendix E of the Agreement. The amount of the reductions shall equal the reduction in Panhandle's cost of purchase gas computed on a weighted average basis for the 12 months' periods preceding such suppliers' rate reductions and which result in cost reductions below the level of 15.00 cents per Mcf, but this base figure shall be reduced to give effect to any reduction in Panhandle's rates which has occurred in accordance with the provisions set out in Article VI of the Agreement.

(6) Panhandle reaffirms its rate obligation with respect to liberalized depreciation which it undertook in Article IV of the Agreement filed in Docket No. RP64–18 and approved by Commission order issued March 30, 1964, in that proceeding.

(7) Panhandle reserves the right to make appropriate rate filings to reflect prospectively the jurisdictional portion of any net increase or net decrease in federal income taxes attributable solely to changes in tax rates from the

presently effective 48 percent, or to the imposition of new federal taxes, if the enactment of such change in tax rate or new tax shall occur prior to January 1, 1967, and if the impact of such tax change results in an increase or decrease of one mill per Mcf.

(8) Trunkline's rates for the sale of gas to Panhandle as set out in its Rate Schedule P-1 in the proceeding in Docket No. RP66-20, shall have been made effective without suspension.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified herein may become effective as of October 1, 1965, as requested.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Panhandle's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets hereinbefore described are accepted for filing to be effective as of October 1, 1965, subject to the terms and conditions of this order.

(B) Panhandle shall comply with each of the provisions of the Agreement filed herein on January 6, 1966, relating to present and future rate reductions and refunds.

(C) Within twenty (20) days of making each of the refunds in accordance with paragraph (B) above, Panhandle shall report to the Commission, in writing and under oath, the amount of the refunds made to each customer, showing separately the amount of the principal and interest so paid together with a computation of the manner in which such refunds were determined, and shall serve a copy thereof upon each customer receiving a refund, and upon the interested state commissions.

(D) Upon compliance with the terms and conditions set out in this order and in the Agreement, the proceeding in Docket No. RP66-21 shall be terminated.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Panhandle, or any party or person affected by this order, in any proceeding now pending, or hereafter instituted by, or against, Panhandle, or any other party or person.

APPENDIX A

PANHANDLE EASTERN PIPE LINE CO.

STATEMENT OF RATES TO BE MADE EFFECTIVE AS OF OCTOBER 1, 1965

Rate schedules and zones	Charges per Mcf		
	Demand	Commodity	Straight line
General service:		*Cents*	*Cents*
G-1 Eastern zone	$2.19	23.7	
G-2 Central zone	1.99	21.7	
G-3 Western zone	1.89	21.2	
Small general service:			
SG-1 Eastern zone			37.3
SG-2 Central zone			34.2
SG-3 Western zone			32.9
Limited service:			
LS-1 Eastern zone	2.06	23.7	
Storage service:			
S-1 Eastern zone			30.9
Seasonal service:			
SS-1 Eastern zone	2.19	23.7	
Combined service:			
CS-1 Eastern zone			
Contract demand volumes	2.19	23.7	
Annual contracted volumes:			
November-March			30.9
April-October			29.3
Interruptible service:			
I-1 Eastern zone			30.9
I-2 Central zone			28.2
I-3 Western zone			27.4

APPENDIX B

PANHANDLE EASTERN PIPE LINE CO.

GAS SUPPLIER DOCKETS REFERRED TO IN ARTICLE V, SECTION I

Supplier	FPC rate schedule	Docket No.
Anadarko Production Co	19	RI61-502.
M. B. Armer	3	G-17926.
Ashland Oil & Refining Co	120	RI60-229.
Do	121	RI60-229.
Do	108	RI60-230.
Do	109	RI60-230.
Cabot Corp	28	RI60-318.
Do	35	RI62-11.
Columbian Fuel Corp	1	RI60-67.
Do	2	RI60-67.
Coltexo Corp	2	RI60-68.
Edwin L. Cox	15	G-14497; G-18103; RI60-203; RI61-396.
Do	5	RI60-471.
Do	6	RI60-471.
Do	11	RI61-250.
Graham-Michaelis Drilling Co	26-A	G-18571.
Do	26-B	G-18571.
Hamilton Brothers Ltd	14	CI61-1775.
Helmerich & Payne, Inc	13	RI60-342.
J. M. Huber Corp	4	RI61-483.
Do	28	RI62-15.
Monsanto Chemical Corp	13	RI62-35.
Paul J. Ottis, et al	1	RI61-35.
Pan American Petroleum Co	196	RI60-254.
Do	212	RI60-254.
Do	134	RI60-271.
Do	221	G-18949; RI61-6; RI62-2.
Phillips Petroleum Co	5	G-10883; G-16112; G-19845.
Do	290	RI62-16.
Shamrock Oil & Gas Corp	4	RI60-217; RI60-425.
Trunkline Gas Co	P-1	G-19479; RP60-6.
Westhoma Oil Co	2	G-14073; G-16711; G-20279.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

EXHIBIT B

PANHANDLE EASTERN PIPE LINE CO., DOCKET NO. RP66–21

Cost of Service for Year 1966

	Staff adjusted costs (projected 1966)
Operation and maintenance expenses	$141, 129, 159
Other gas revenues—credit	(673, 437)
Depreciation, depletion, and amortization	16, 888, 257
Other taxes	6, 902, 523
Return	20, 168, 438
Federal income tax	8, 149, 495
State income taxes	190, 278
Total cost of service	192, 754, 713
Jurisdictional portion of cost of service (percent)	86. 7
Jurisdictional amount	167, 169, 609
Jurisdictional revenues at present rates	167, 919, 609
Revenue excess	750, 000

APPENDIX C

PANHANDLE EASTERN PIPE LINE CO.

GAS SUPPLIER DOCKETS REFERRED TO IN ARTICLE V, SECTION 2

Supplier	FPRC rate schedule	Docket No.
Amax Petroleum Co	4	CI62–1294.
Anadarko Production Co	70	CI63–264.
Cabot Corp	33	RI62–208.
Do	69	RI63–123.
Champlin Oil & Refining Co	69	RI62–396.
Colorado Oil & Gas Co	39	G–13086.
Edwin L. Cox	15	RI62–365; RI63–374.
Do	14	RI63–277.
Falcon Seaboard Drilling, et al	5	RI62–183.
Forest Oil Corp	30	CI63–1398.
Gas, Inc	3	RI63–242.
General American Oil Co. of Texas	9	RI62–167.
Graham-Michaelis Drilling Co	52	CI62–1297.
Do	26–B	RI62–423.
Gulf Oil Corp	264	CI64–526.
Horizon Oil & Gas Co	17	RI62–408.
J. M. Huber Corp	27	RI62–375.
Monsanto Chemical Co., et al	21	RI62–316.
NAFCO Oil & Gas Inc., et al	14	RI63–451.
Northern Pump Co	28	RI62–317.
Oklahoma Natural Gas Co	13	CI61–698.
R. H. Owens	6	CI62–1301.
Pan American Petroleum Corp	194	RI62–377.
Do	221	RI62–500; RI63–457.
Do	223	RI63–469.
Phillips Petroleum Co	296	RI63–16.
Kenneth Rupp, et al	1	CI63–1033.
Shamrock Oil & Gas Corp	32	RI62–602.
Sun Oil Co	78	RI62–185.
Union Oil of California	14	RI62–376.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX D

PANHANDLE EASTERN PIPE LINE CO.

GAS SUPPLIER DOCKETS REFERRED TO IN ARTICLE V, SECTION 3

Supplier	FPC rate schedule	Docket No.
A. L. Abercrombie, et al	4	RI64-557.
Mark H. Adams	14	RI65-311.
Amerada Petroleum Corp	75	RI65-334.
Do	127	CI65-958.
Anadarko Production Co	105, 15, 23, 44	RI60-230; CI60-699; CI61-78; CI61-1755.
Harold Anderson, et al	2	CI64-1397.
Do	1	CI64-789.
Armer Drilling Co	1	G-17927.
Ashland Oil & Refining Co	125	RI61-517.
Do	135	RI64-161.
Do	141	RI64-552
Beard Oil Co	2	CI64-1228.
Thomas E. Berry	10	CI64-1246.
British American Oil Producing Co	15	RI62-184
Cabot Corp	41	RI64-309.
Do	28	RI65-341.
Do	74	CI64-541.
H. K. Calvert, Trustee, et al	1	CI64-1242.
Champlin Oil & Refining Co	72	RI64-282.
Do	74	RI64-375.
Cities Service Gas Co	P	CP65-140.
Cities Service Oil Co	198	CI65-1204.
Columbian Fuel Corp	33	RI64-747.
Edwin L. Cox	15	RI64-610; RI65-507.
Do	20	RI64-638.
John J. Eisner	1	CI61-1129.
Forest Oil Co	30	RI64-447.
Gas, Inc	1	RI65-314.
Graham-Michaelis Drilling Co	26A	RI62-423.
Gulf Oil Corp	292	CI65-898.
Do	272	CI64-1280.
J. F. & Elizabeth Hamilton Trust Estate	1	RI65-306.
Hamilton Brothers Ltd	8	CI61-31.
Roger C. Hanks	2	CI66-324.
Harper Oil Co	10	RI63-276.
Helmerich & Payne, Inc	13	RI65-411.
Do	29	RI65-162.
Do	28	RI65-555.
Hill & Hill	11	RI63-469.
J. M. Huber Corp	9	RI62-167.
Johnson & Magaw, et al	1	CI65-18.
Jones & Pellow Oil Co., et al	2	CI66-342.
Keating Parker Drilling Co	1	RI62-154.
Kerr-McGee Oil Industries, Inc	58	RI63-427.
King Resources Co	3	RI65-97.
Kirby Petroleum Co., et al	22	RI64-283.
Walter Kuhn, et al	43	RI65-463.
Do	42	RI65-310.
Mahaska Gas Co	4	RI65-304.
Mayflo Oil Co	10	RI64-702.
Mildred McCutchen	9	RI65-303.
Mull Drilling Co., Inc	5	RI65-13.
National Coop Refinery Association	9	RI64-115.
Do	10	RI65-27.
Oil Development Co. of Texas	4	RI65-496.
Palm Petroleum Corp	5	RI66-191.
C. T. Palmer	3	RI65-302.
Pan American Petroleum Corp	246	RI63-244.
Do	221	RI64-787.
Do	196	RI65-589.
Do	212	RI65-589.
Do	134	RI65-335.
Petroleum, Inc	10	RI64-554.
Do	18	RI65-176.
Do	22	RI65-337.
Do	25	RI64-103.
Phillips Petroleum Co	5	RI65-220.
Do	353	RI65-449.
Pratt County Gas Co	1	RI64-657.
Roy W. Reed	1	CI65-759.
Ridgeway & Morrison	6	CI62-1301.
Hughes Seewald, et al	3	RI60-229.
Shamrock Oil & Gas Corp	24	RI64-86.
Do	32	RI64-542.
Do	30	RI64-47; RI65-494.
Do	29	RI66-62.
Shell Oil Co	196	RI65-475.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX D—continued

Supplier	FPC rate schedule	Docket No.
Walter L. Sidwell, et al	20	RI65-301.
Howard H. Sidwell, et al	20	RI65-307.
Donald W. Sidwell, et al	20	RI65-308.
Sierra Petroleum Corp	3	CI62-150.
Skelly Oil Co	93	RI64-436.
Warren W. Spikes	1	RI65-312.
Stevens County Oil & Gas Co	26	RI65-313.
The Superior Oil Co., et al	114	CI65-1048.
Sun Oil Co., et al	172	CI64-1271.
Sunray DX Oil Co	251	CI65-851.
Texaco Inc	----------	CI65-1301.
Thomas & Brewer, et al	3	CI60-193.
Do	7	CI61-957.
Texas Gas Producing Co	7	CI64-580.
E. S. Villines, et al	2	RI65-416.
J. J. Weigel	7	RI65-305.
Westhoma Oil Co	2	RI61-318; RI62-249; RI63-306; RI64-639; RI65-434.
Edgar W. White & Associates, et al	3	CI62-931.
Yingling Oil Co., Inc	4	RI60-229.
Yucca Petroleum Co	10	RI65-376.
Do	5	RI63-251.
Burnett Corp	2	CI60-358.
Phillips Petroleum Co	399	CI63-1371.
Cities Service Oil Co	139	G-4579.
Saturn Oil & Gas Co., Inc., et al	3	RI65-559.

APPENDIX E

PANHANDLE EASTERN PIPE LINE CO.

GAS SUPPLIER DOCKETS REFERRED TO IN ARTICLE VI

Supplier	FPC rate schedule	Docket No.
A. L. Abercrombie, et al	4	RI64-557.
Mark H. Adams	14	RI65-311.
Amax Petroleum Co	4	CI62-1294.
Amerada Petroleum Corp	75	RI65-334.
Do	127	CI65-958.
Anadarko Production Co	19, 70, 105, 15, 23, 44	RI61-502, CI63-264, RI60-230, CI60-699, CI61-78, CI61-1755.
Harold Anderson, et al	2	CI64-1397.
Do	1	CI64-789.
M. B. Armer	3	G-17926.
Armer Drilling Co	1	G-17927.
Ashland Oil & Refining Co	108, 109, 120, 121, 125, 135, 141	RI60-230, RI60-229, RI61-517, RI64-161, RI64-552.
Beard Oil Co	2	CI64-1228.
Thomas E. Berry	10	CI64-1246.
British American Oil Producing Co	15	RI62-184.
Cabot Corp	41	RI64-309.
Do	28	RI60-318, RI65-341.
Do	33	RI62-208.
Do	35	RI62-11.
Do	69	RI63-123.
Do	74	CI64-541.
H. K. Calvert, Trustee, et al	1	CI64-1242.
Champlin Oil & Refining Co	69	RI62-396.
Do	72	RI64-282.
Do	74	RI64-375.
Cities Service Gas Co	P	CP65-140.
Cities Service Oil Co	198	CI65-1204.
Colorado Oil & Gas Co	39	G-13086.
Coltexo Corp	2	RI60-68, RI65-558.
Columbian Fuel Corp	1	RI60-67, RI65-557.
Do	2	RI60-67, RI65-557.
Do	33	RI64-747.
Edwin L. Cox	15	G-14497, G-18103, RI60-203, RI62-365, RI63-374, RI64-610, RI65-507, RI61-396.
Do	5	RI60-471.
Do	6	RI60-471.
Do	11	RI60-250.
Do	14	RI63-277.
Do	26	RI64-638.
John J. Eisner	1	CI61-1129.
Falcon Seaboard Drilling Co., et al	5	RI62-183.
Forest Oil Co	30	RI64-447.
Gas, Inc	3	RI63-242.
Do	1	RI65-314.
General American Oil Co. of Texas	9	RI62-167.
Graham-Michaelis Drilling Co	26A	G-18571, RI62-423.
Do	26B	G-18571, RI62-423.
Do	52	CI62-1297.
Gulf Oil Corp	292	CI65-898.
Do	264	CI64-526.
Do	272	CI64-1280
J. F. & Elizabeth Hamilton Trust Estate	1	RI65-306.
Hamilton Brothers Ltd	14	CI61-1775.
Do	8	CI61-31.
Roger C. Hanks	2	CI66-324.
Harper Oil Co	10	RI63-276.
Helmerich & Payne, Inc	13	RI60-342, RI65-411.
Do	29	RI65-162.
Do	28	RI65-555.
Hill & Hill	11	RI63-469.
Horizon Oil & Gas Co	17	RI62-408.
J. M. Huber Corp	27	RI62-375.
Do	4	RI61-483.
Do	28	RI62-15.
Do	9	RI62-167.
Johnson & Magaw, et al	1	CI65-18.
Jones & Pellow Oil Co., et al	2	CI66-342.
Keating Parker Drilling Co	1	RI62-154.
Kerr-McGee Oil Industries, Inc	58	RI63-427.
King Resources Co	3	RI65-97.
Kirby Petroleum Co., et al	22	RI64-283.
Walter Kuhn, et al	43	RI65-463.
Do	42	RI65-310.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX E—continued

Supplier	FPC rate schedule	Docket No.
Mahaska Gas Co	4	RI65-304.
Mayflo Oil Co	10	RI64-702.
Mildred McCutchen	9	RI65-303.
Monsanto Corp	13	RI62-35.
Do	21	RI62-316.
Mull Drilling Co., Inc	5	RI65-13.
NAFCO Oil & Gas Co., et al	14	RI63-451.
National Coop Refinery Association	9	RI64-115.
Do	10	RI65-27.
Northern Pump Co	28	RI62-317.
Oil Development Co. of Texas	4	RI65-496.
Oklahoma Natural Gas Co	13	CI61-698.
Paul J. Ottis, et al	1	RI61-35.
R. H. Owens	6	CI62-1301.
Palm Petroleum Corp	5	RI66-191.
C. T. Palmer	3	RI65-302.
Pan American Petroleum Corp	246	RI63-244.
Do	194	RI62-377.
Do	221	RI62-500, RI63-457, G-18949, RI61-6, RI62-2, RI64-787.
Do	223	RI63-469.
Do	196	RI60-254, RI65-589.
Do	212	RI60-254, RI65-589.
Do	134	RI60-271, RI65-335.
Petroleum, Inc	10	RI64-554.
Do	18	RI65-176.
Do	22	RI65-337.
Do	25	RI64-103.
Phillips Petroleum Co	5	G-10883, G-16112, G-19845, RI65-220.
Do	290	RI62-16.
Do	296	RI63-16.
Do	353	RI65-449.
Pratt County Gas Co	1	RI64-657.
Roy W. Reed	1	CI65-759.
Ridgeway & Morrison	6	CI62-1301.
Kenneth Rupp, et al	1	CI63-1033.
Hughes Seewald, et al	3	RI60-229.
Shamrock Oil & Gas Corp	24	RI64-86.
Do	32	RI62-302, RI64-542.
Do	30	RI64-47, RI65-494.
Do	29	RI66-62.
Do	4	RI60-217, RI60-425.
Shell Oil Co	196	RI65-475.
Walter L. Sidwell, et al	20	RI65-301.
Howard H. Sidwell, et al	20	RI65-307.
Donald W. Sidwell, et al	20	RI65-308.
Sierra Petroleum Corp	3	CI62-150.
Skelly Oil Co	93	RI64-436.
Warren W. Spikes	1	RI65-312.
Stevens County Oil & Gas Co	26	RI65-313.
The Superior Oil Co., et al	114	CI65-1048.
Sun Oil Co	78	RI62-185.
Sun Oil Co., et al	172	CI64-1271.
Sunray DX Oil Co	251	CI65-851.
Texaco Inc	------	CI65-1301.
Thomas & Brewer, et al	3	CI60-193.
Do	7	CI61-957.
Texas Gas Producing Co	7	CI64-580.
Trunkline Gas Co	P-1	G-19479, RP60-6.
Union Oil of California	14	RI62-376.
E. S. Villines, et al	2	RI65-416.
J. J. Weigel	7	RI65-305.
Westhoma Oil Co	2	G-14073, G-16711, G-20279, RI61-318, RI62-249, RI63-306, RI64-639, RI65-434.
Edgar W. White & Associates, et al	3	CI62-931.
Yingling Oil Co., Inc	4	RI60-229.
Yucca Petroleum Co	10	RI65-376.
Do	5	RI63-251.
Burnett Corp	2	CI60-358.
Phillips Petroleum Co	399	CI63-1371.
Cities Service Oil Co	139	G-4579.
Saturn Oil & Gas, Inc., et al	3	RI65-559.

APPENDIX F

EXCERPT FROM PANHANDLE'S AGREEMENT AS TO RATES

(February 25, 1964)

Article IV

Liberalized Depreciation

Section 1. On March 15, 1963, in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 316 F. 2d 659, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's utilization of 1.5% as the allowance for return on Panhandle's balance of deferred federal income taxes. On February 3, 1964, in *Alabama-Tennessee Natural Gas Company*, Opinion No. 417, a proceeding to which Panhandle was not a party, the Commission announced a change in the method of treatment to be applied to natural gas companies utilizing liberalized depreciation.

It is agreed that, until October 1, 1965, Panhandle's rates shall not be further modified to give effect to the principles prescribed by the Commission's Opinion No. 417, but if at the time Panhandle files its federal income tax return for 1964 or 1965, Panhandle elects to utilize liberalized depreciation in determining its deductions for tax purposes, it will reflect the principles specified in Opinion No. 417 by filing revised tariff sheets reducing the level of the rates provided for in this Agreement, to take effect on October 1, 1965, or 1966, whichever is applicable and to reflect such principles during the period the rates provided for herein remain in effect, and for so long as the Commission continues to apply the ratemaking principles of Opinion No. 417 and Panhandle continues to utilize liberalized depreciation. In no event shall more than one such filing be required.

For the purpose of such filing, the balance in Account 282 shall be that which is shown on Panhandle's books as of October 1, 1965, or 1966, whichever is applicable, and the amount attributable to current utilization of liberalized depreciation to be recognized herein shall be the amount by which the deduction for liberalized depreciation exceeds straight line depreciation based on the twelve-month period ending October 1, 1965, or 1966 whichever is applicable, the jurisdictional portion of which is to be reflected 50% in the demand components and 50% in the commodity components of the rates, uniformly applied. If Panhandle makes such a filing, or if Panhandle does not elect to take liberalized depreciation in its 1965 tax return, this rate reduction obligation shall terminate; provided, however, that the reduction in its rate base to give effect to amounts included in Account 282 shall not be contingent upon its current utilization of liberalized depreciation.

Notwithstanding the foregoing, Panhandle may defer any rate reduction with respect to liberalized depreciation until 20 days from and after the date upon which a final order of a court of review affirming Opinion No. 417 and accompanying order on its merits, becomes final and is no longer subject to judicial review. If Panhandle defers such rate reduction and subsequently becomes obligated to reduce its rates with respect to liberalized depreciation in accordance with the preceding sentence, it shall refund to its jurisdictional customers the portion of the amounts charged and collected from them between October 1, 1965, or 1966, whichever is applicable, and the date upon which such affirmance becomes nonappealable which is attributable to the Company's failure to give effect to the principles prescribed in Opinion No. 417 in accordance herewith, together with interest thereon at the rate of 7% per annum computed from the date of receipt to the date of such refund.

Section 2. If Trunkline reduces its rates to Panhandle and/or makes refunds to Panhandle pursuant to the provisions of Article III (Liberalized Depreciation) of its Agreement as to Rates referred to in Article I hereof, while the rates provided for in this Agreement are in effect, Panhandle shall reduce its rates or make refunds, as the case may be and based thereon, in accordance with the ratio of Panhandle's jurisdictional sales to its total sales for the twelve-month period preceding the month in which Trunkline's rate reduction became effective.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRUNKLINE GAS COMPANY, DOCKET NO. RP66-20

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued February 24, 1966)

Trunkline Gas Company (Trunkline), on January 6, 1966, tendered for filing an "Agreement as to the Rates of Trunkline Gas Company" (Exhibit A attached hereto*) wherein it proposes to reduce its rates subject to the jurisdiction of the Commission, and concurrently tendered certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1,[1] to reflect such reductions. Trunkline proposes to reduce its straight-line rates and the commodity component of its two-part rates by 0.9¢ per Mcf effective as of October 1, 1965. The total reduction approximates $3,000,000 per year based on estimated jurisdictional sales for the 1966 calendar year.

The proposed rate reduction reflects estimated 1966 operations and costs which are summarized in the cost-of-service shown in Exhibit B hereof. The rate reduction proposal has resulted from conferences with the Staff as a consequence of the Commission's continuing supervision of natural gas companies and the periodic review of the reports filed with the Commission by such companies. Notice of the filing of the proposed Agreement was issued on January 14, 1966. No comments have been received.

In addition to making the reduced rates effective as of October 1, 1965, the aforementioned Agreement provides as follows:

(1) Trunkline will refund to its jurisdictional customers, without interest, the difference between the amounts billed and collected under the currently effective rates and the amounts which would have been collected under the rates set out in the Agreement, for gas sold and delivered from and after October 1, 1965.

(2) Trunkline, in addition, will refund the sum of $450,000 to its jurisdictional customers which is to be apportioned amongst such customers on the basis of volumes purchased during the period extending from October 1, 1965 through December 31, 1965.

(3) Trunkline's costs associated with its exploration, development and production of natural gas, which represents 0.7 percent of its total gas supply and all of which is sold off-system, have been excluded from its cost-of-

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*Omitted in printing.

[1] First Revised Sheet No. 9-AE; Third Revised Sheets Nos. 5-A and 9-F; Fourth Revised Sheets Nos. 9-D and 9-F. Fifth Revised Sheets Nos. 6-B and 9-G; Sixth Revised Sheets Nos. 6-A and 7; and Seventh Revised Sheet No. 4.

service, and the revenues derived from such off-system sales are not reflected in its transmission system rates.

(4) Trunkline's existing obligations to flow-through gas supplier refunds, as provided in Commission's orders issued May 10, 1962, in Docket No. G–12884, *et al.*, 27 FPC 930, and March 30, 1964, in Docket No. RP64–19, 31 FPC 743, are continued during the term of this Agreement, all as more fully prescribed in Sections 1 and 2 of Article V of the subject Agreement and Appendices B and C thereof. In addition with respect to gas purchased on and after October 1, 1965, Trunkline will flow-through the jurisdictional portion of all refunds received from its suppliers all of which is more fully detailed in Section 3 of Article V of said Agreement and Appendix D thereof. Said refunds will be made within 45 days of the time that the accumulated undistributed refundable amount total $250,000.

(5) During the period in which the rates provided for in the subject Agreement remain in effect, Trunkline will reduce its rates to reflect the reduction in rates of its gas suppliers resulting from any of the proceedings listed in Appendix E to the Agreement as more fully set forth in Section VI of that Agreement. The amount of the reductions shall equal the reduction in Trunkline's cost of purchase gas computed on a weighted average basis for the 12 months' periods preceding such suppliers' rate reductions and which result in cost reductions below the level of 18.3 cents per Mcf, but this base figure shall be reduced to give effect to any reduction in Trunkline's rates which has occurred in accordance with the provisions set out in Article VI of the Agreement.

(6) Trunkline reaffirms its rate obligation with respect to liberalized depreciation which it undertook in Article III of the Agreement filed in Docket No. RP64–19 approved by Commission order issued March 30, 1964, in that proceeding.

(7) Trunkline reserves the right to make appropriate rate filings to reflect prospectively the jurisdictional portion of any net increase or net decrease in federal income taxes attributable solely to changes in tax rates from the presently effective 48 percent level, or to the imposition of new federal taxes, if the enactment of such change in tax rate or new tax shall occur prior to January 1, 1967, and if the impact of such tax change results in an increase or decrease of one mill per Mcf.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets specified herein may become effective as of October 1, 1965, as requested.

(2) The proposed revised tariff sheets, the rate reductions therein contained and Trunkline's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived and the revised tariff sheets hereinbefore described are accepted for filing to be effective as of October 1, 1965, subject to the terms and conditions of this order.

(B) Trunkline shall comply with each of the provisions of the Agreement filed herein on January 6, 1966, relating to present and future rate reductions and refunds.

(C) Within twenty (20) days of making each of the refunds in accordance with paragraph (B) above, Trunkline shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation of the manner in which such refunds were determined, and shall serve a copy thereof upon each customer receiving a refund and upon the interested State commissions.

(D) Upon compliance with the terms and conditions set out in this order and in the Agreement, the proceeding in Docket No. RP66-20 shall be terminated.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Trunkline, or any party or person affected by this order, in any proceeding now pending, or hereafter instituted by, or against, Trunkline, or any other party or person.

APPENDIX A

TRUNKLINE GAS CO.

RATES TO BECOME EFFECTIVE OCTOBER 1, 1965

Rate schedule	Proposed rate	
P-1	Demand	$2.00
	Commodity	.250
G-1	Demand	2.00
	Commodity	.250
SG-1	35.6 cents	
R-1	31.6 cents (Winter)	
	28.3 cents (Summer)	
P-2	Demand	2.29
	Commodity	.274
G-2	Demand	2.29
	Commodity	.274
SG-2	41.7 cents	
R-2	34.9 cents (Winter)	
	31.2 cents (Summer)	

APPENDIX B

TRUNKLINE GAS CO.

SUPPLIER PROCEEDINGS REFERRED TO IN ARTICLE V, SECTION 1

Producer	FPC rate schedule	Docket No.
Austral Oil Exploration Co	13	G-20289.[1]
J. R. Goff, Trustee	1	G-14053, G-17527, G-20441, RI60-472.
H. L. Hunt	13	G-13837, G-17163, G-20340, RI60-427.
L. B. Hunt Estate	2	G-13840, G-17162, G-20445, RI60-432.
Claude M. Langton, Trustee	1	G-14054, G-17164, G-20456, RI60-428.
W. C. McBride	1	G-16890.
Robert Mosbacher, et al	2	G-20290.[1]
Pan American Petroleum Corp	258, 259, 260	G-20288.[1]
D. N. Penton, et al	1	G-17800.
Petroleum, Inc	13	G-20276, RI61-295.
Rouse Well Service	1	G-18846.
Secure Trusts	2	G-13839, G-17161, G-20455, RI60-429.
Superior Oil Co	1	G-18168, G-20435.
Do	3	G-20577.
C. B. Webster	2	G-14187.
Sun Oil Co	[2] 89	G-13937, G-17346, G-20447, RI60-410.

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[1] Proceedings limited to tax reimbursement by FPC order of Dec. 23, 1959.
[2] Rate reduced from 23.5 cents to 17.7 cents effective Sept. 1, 1964. Refunds in escrow.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX C

TRUNKLINE GAS CO.

SUPPLIER PROCEEDINGS REFERRED TO IN ARTICLE V, SECTION 2

Producer	FPC rate schedule	Docket No.
William T. Burton Industries, Inc	3	G-20379.
Christie, Mitchell & Mitchell	25	CI62-997.
General American Oil Co. of Texas	62	CI63-886.
Kilroy Properties, Inc	4	CI60-478.
Oil Reserves Corp	2	CI61-468.
Sun Oil Co	120	CI60-348.
Trice Production Co	19	CI62-1026.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX D

TRUNKLINE GAS CO.

SUPPLIER PROCEEDINGS REFERRED TO IN ARTICLE V, SECTION 3

Producer	FPC rate schedule	Docket No.
Amerada Petroleum	14	RI65-552.
American Petrofina Co. of Texas	30	RI65-498.
Associated Oil & Gas Co	4	RI65-580.
Do	6	RI65-581.
C. G. Benham	1	RI65-573.
Callery Properties, Inc., *et al*	11	CI65-7.
Thomas C. Canan (Operator), *et al*	1	RI65-607.
Coastal States Gas Producing Co	48	RI65-613.
General American Oil Co. of Texas	62	RI64-317.
Humble Oil & Refining Co	325	RI66-194.
Midhurst Oil Corp	9	RI65-423.
Irwin Miller (Operator), *et al*	1	CI63-179. [1]
Shell Oil Co	217	RI65-475.
Fred W. Shield	8	RI65-516.
J. C. Trahan, Drilling Contractor, Inc., *et al*	26	RI65-551.

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[1] Conditioned initial rate on sales from additional acreage dedicated in Rate Schedule Supplement No. 7.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX E

TRUNKLINE GAS CO.

SUPPLIER PROCEEDINGS REFERRED TO IN ARTICLE VI

Producer	FPC rate schedule	Docket No.
Amerada Petroleum Corp	14	RI65-552.
American Petrofina Co. of Texas	30	RI65-498.
Associated Oil & Gas Co	4	RI65-580.
Do	6	RI65-581.
Austral Oil Exploration Co	13	G-20289.[1]
C. G. Benham	1	RI65-573.
William T. Burton Industries, Inc	3	G-20379.
Callery Properties, Inc., *et al*	11	CI65-7.
Thomas C. Canan (Operator), *et al*	1	RI65-607.
Christie, Mitchell & Mitchell	25	CI62-997.
Coastal States Gas Producing Co	48	RI65-613.
General American Oil Co. of Texas	62	RI64-317.
Do	62	CI63-886.
J. R. Goff, Trustee	1	G-14053, G-17527, G-20441, RI60-472.
Humble Oil & Refining Co	325	RI66-194.
H. L. Hunt	13	G-13837, G-17163, G-20340, RI60-427.
L. B. Hunt Estate	2	G-13840, G-17162, G-20445, RI60-432.
Kilroy Properties, Inc	4	CI60-478.
Claude M. Langton, Trustee	1	G-14054, G-17164, G-20456, RI60-428.
W. C. McBride	1	G-16890.
Midhurst Oil Corp	9	RI65-423.
Irwin Miller (Operator), *et al*	1	CI63-179.[2]
Robert Mosbacher, *et al*	2	G-20290.[1]
Oil Reserves Corp	2	CI61-468.
Pan American Petroleum Corp	258, 259, 260	G-20288.[1]
D. N. Penton, *et al*	1	G-17800.
Petroleum, Inc	13	G-20276, RI61-295.
Rouse Well Service	1	G-18846.
Secure Trusts	2	G-13839, G-17161, G-20455, RI60-429.
Shell Oil Co	217	RI65-475.
Fred W. Shield	8	RI65-516.
Sun Oil Co	120	CI60-348.
Do	[3] 89	G-13937, G-17346, G-20447, RI60-410.
Superior Oil Co	1	G-18168, G-20435.
Do	3	G-20577.
J. C. Trahan, Drilling Contractor, Inc., *et al*	26	RI65-551.
Trice Production Co	19	CI62-1026.
C. B. Webster	2	G-14187.

[1] Proceedings limited to tax reimbursement by FPC order of December 23, 1959.

[2] Conditioned initial rate on sales from additional acreage dedicated in Rate Schedule Supplement No. 7.

[3] Rate reduced from 23.5 cents to 17.7 cents effective Sept. 1, 1964. Refunds in escrow.

NOTE.—Any producer docket inadvertently omitted shall be deemed to be included in this listing.

APPENDIX F

EXCERPT FROM TRUNKLINE'S AGREEMENT AS TO RATES

(February 25, 1964)

Article III

Liberalized Depreciation

It is agreed that, until October 1, 1965, Trunkline's rates shall not be modified to give effect to the principles set forth in the Commission's Opinion No. 417 relating to liberalized depreciation, but if at the time Trunkline files its federal income tax return for 1964, or 1965, Trunkline elects to utilize liberalized depreciation in determining its deductions for tax purposes, it will reflect the principles specified in Opinion No. 417 by filing revised tariff sheets reducing the level of the rates provided for in this agreement, to take effect on October 1, 1965, or 1966, whichever is applicable, and to reflect such principles during the period the rates provided for herein remain in effect, and for so long as the Commission continues to apply the ratemaking principles of Opinion No. 417 and Trunkline continues to utilize liberalized depreciation. In no event shall more than one such filing be required.

For the purpose of such filing, the balance in Account 282 shall be that which is shown on Trunkline's books as of October 1, 1965, or 1966, whichever is applicable, and the amount attributable to current utilization of liberalized depreciation to be recognized herein shall be the amount by which the deduction for liberalized depreciation exceeds straight line depreciation based on the twelve-month period ending October 1, 1965, or 1966, whichever is applicable, the jurisdictional portion of which is to be reflected 50% in the demand components and 50% in the commodity components of the rates, uniformly applied. If Trunkline makes such a filing, or if Trunkline does not elect to take liberalized depreciation in its 1965 tax return, the rate reduction obligation shall terminate; provided, however, that the reduction in its rate base to give effect to amounts included in Account 282 shall not be contingent upon its current utilization of liberalized depreciation.

Notwithstanding the foregoing, Trunkline may defer any rate reduction with respect to liberalized depreciation until 20 days from and after the day upon which a final order of a court of review affirming Opinion No. 417 and accompanying order on its merits, becomes final and is no longer subject to judicial review. If Trunkline defers such rate reduction and subsequently becomes obligated to reduce its rates with respect to liberalized depreciation in accordance with the preceding sentence, it shall refund to its jurisdictional customers the portion of the amounts charged and collected between October 1, 1965, or 1966, whichever is applicable, and the date upon which such affirmance becomes nonappealable which is attributable to the Company's failure to give effect to the principles prescribed in Opinion No. 417 in accordance herewith, together with interest thereon at the rate of 7% per annum computed from the date of receipt to the date of such refund.

EXHIBIT B

TRUNKLINE GAS CO.

1966 COST OF SERVICE

	Adjusted costs (projected 1966)
Operation and maintenance expenses	$71, 888, 487
Depreciation, depletion and amortization	10, 126, 506
Other taxes	3, 332, 437
Other gas revenues—credit	(323, 569)
Return	13, 814, 288
Federal income tax	7, 689, 527
State income tax	160, 883
Total cost of service	106, 688, 559
Revenues at present rates	109, 688, 416
Revenue excess	2, 999, 857

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

HYDROELECTRIC LICENSED PROJECTS—INSPECTIONS TO INSURE SAFE OPERATION, DOCKET NO. R-268

ORDER DISMISSING NOTICE OF INTERVENTION AND APPLICATION FOR REHEARING AND DENYING PETITION TO ADOPT AMENDED RULE

(Issued February 25, 1966)

On October 20, 1964, the Commission issued the notice of proposed rulemaking in this proceeding; publication was made in the Federal Register (29 F.R. 14643) and copies of the notice were mailed to State commissions and to other persons. Comments were invited from interested persons to be submitted by December 9, 1964. At the request of several licensees, the time for filing data, views and comments was subsequently extended through January 8, 1965.[1] After consideration of comments received, the Commission issued on December 27, 1965, 34 FPC 1551, Order No. 315, Promulgating New Part 12 of Regulations under the Federal Power Act (18 CFR Part 12).[2] The new Part 12 of the Regulations which by its terms became effective on December 31, 1965, provides for inspection of project works with respect to safety of operation.

On January 26, 1966, the Public Service Commission of Wisconsin filed what it denominated as a Notice of Intervention and an Application for Rehearing with respect to Order No. 315 and, in the alternative, a Petition to Amend the Rule promulgated by Order No. 315. The Wisconsin Commission had not previously submitted any comments to the Commission's original rulemaking notice, although the rules as proposed do not differ from those adopted with respect to the issue the Wisconsin Commission now advances. Specifically it requests that this Commission grant rehearing for the purpose of considering whether it would be appropriate to modify the rule to provide that its requirements do not apply to dams or structures or to the owners or operators thereof which are subject to inspection for purposes of safety and repair by requirements imposed by a state regulatory agency under state statute and that as a part of the rehearing process this Commission conduct a hearing or take other steps it might deem necessary or appropriate for the purpose of obtaining facts to ascertain if such proposal should be adopted. In the alternative and on the same grounds, the Wisconsin Commission petitions for an amendment of the rule to provide the same exemption.

The inspection regulations adopted by Order No. 315 were authorized in full accordance with the provisions of our Rules of Practice and Procedure and the governing provisions of the Administrative Procedure Act after all parties including the Wisconsin Commission had had a full opportunity to express views on the proposal. The Wisconsin Commission has made no showing as to why it failed to participate in the rulemaking process[3] during its earlier stages, and accordingly, to the extent that the notice of intervention and application for rehearing may be intended either to toll the effectiveness of the rule or as a necessary preliminary to court review, they must be dismissed in the interest of orderly procedure. We shall consider, however, the views of the Wisconsin Commission in connection with its petition to amend Order No. 315.

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[1] Publication of this notice of extension of time was also made in the Federal Register (29 F.R. 16997), and copies of the notice were also sent to State Commissions and other persons.

[2] 30 F.R. 16199.

[3] Our rulemaking procedures do not require interested parties to file intervention petitions. All timely filed comments are considered.

The Wisconsin Commission's request for exemption from the provisions of Order No. 315, on the basis of requirements respecting safety and repair imposed by State statute, does not raise a new matter but rather one that was fully considered during the rulemaking.

We recognized that throughout the almost fifty years in which the Commission has administered the licensing provisions of the Federal Power Act a number of states have supplemented the various safety programs instituted and carried out by this Commission pursuant to the mandate of the Act (see *e.g.*, Section 10(c)), by inspectoral and other safety programs of their own. This is as it should be; in a matter as important as the safety of hydroelectric projects, where a failure can result in catastrophic results, federal action by the responsible licensing agency does not purport to preempt the field and duplicative inspectoral activities are mutually beneficial rather than inconsistent with one another. We concluded, however, that while some of the existing state safety inspection programs are undoubtably of the highest calibre, it would not be conducive to the carrying out of our own responsibilities in this area to attempt to evaluate the relative effectiveness of particular state inspectoral systems, or to authorize them to be substituted for the requirements imposed upon the licensees and independent consultants by our new regulations. We did provide, however, in Section 12.2 of the Regulations (18 CFR 12.2), that both licensees and consultants were to give due consideration to any state inspection programs in carrying out their responsibilities, in the hope and expectation that where dual requirements exist they can be met with a minimum of burden in all parties and a maximum of additional protection to the public.

The Commission finds:

(1) It is appropriate in the administration of the Federal Power Act that the notice of intervention and application for rehearing filed by the Wisconsin Public Service Commission on January 26, 1966 be dismissed.

(2) The petition filed by the Wisconsin Public Service Commission on January 26, 1966 to adopt an amended rule, sets forth no facts or reasons which were not considered previously or which having been considered constitute adequate grounds for the requested amendment of the regulations prescribed by Order No. 315 issued December 27, 1965.

The Commission orders:

The aforesaid notice of intervention and application for rehearing are hereby dismissed, and the aforesaid petition to adopt an amended rule is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2351

ORDER APPROVING RECREATIONAL USE PLAN AS PART OF PROJECT LICENSE

(Issued February 25, 1966)

On February 1, 1965, Public Service Company of Colorado, licensee for Project No. 2351, filed for Commission approval a Recreational Use Plan for the project, known as the "Cabin Creek Pumped Storage Hydroelectric Project", now under construction on South Clear Creek and its tributary, Cabin Creek, in Clear Creek County, Colorado, and to be located on lands of the United States within the Arapaho National Forest. The February 1, 1965, filing, which was supplemented on April 9, 1965 by a statement and a map showing the recreational use plan, was pursuant to Article 46 of the license for the project. The project is located near Georgetown, Colorado, about 35 miles west of Denver.

The project includes the Upper Reservoir created by a dam across Cabin Creek and the Lower Reservoir created by a dam across South Clear Creek. The Upper and Lower reservoirs will impound water surface areas of 23 and 52 acres, respectively, at maximum operating pool levels. Under the proposed plan of operation, the reservoirs will be subject to daily filling cycles creating water surface elevation fluctuations up to 91 feet at Upper Reservoir and up to 42 feet at Lower Reservoir, and the rate of fluctuations will be comparatively rapid, and will depend upon whether or not one or two of the reversible pump-turbine units are in operation at the same time. For example, the maximum rate of refilling Upper Reservoir will average about 11 feet per hour, and the corresponding rate of withdrawal from Lower Reservoir will average about 5 feet per hour. During the generating period, Lower Reservoir will refill at a maximum average rate of about 8 feet per hour.

According to the Recreational Use Plan, which was prepared in cooperation with the U.S. Forest Service, the Bureau of Sport Fisheries and Wildlife of the Department of the Interior, and the Colorado Department of Game, Fish and Parks, in compliance with Article 44 of the license, the location and limited size of the project reservoirs and the nature of pumped storage operation are not conducive to the use of the project area for recreational purposes. Hence, the Recreational Use Plan submitted provides for: (1) replacement in the vicinity of the project, at the licensee's expense, of the U.S. Forest Service camp sites at the Lower Clear Creek Campground to be inundated by Lower Reservoir, as required by Article 40 of the license; and (2) acquisition, at the licensee's expense, of the Chicago Lakes and surrounding lands (totalling about 277 acres and located about 5 miles southeast of the project) in mitigation for the natural stream fishery destroyed by the project and as enhancement of opportunities for fishing and back country camping activities. Following its purchase of the Chicago Lakes area, now privately owned, the licensee's Recreational Use Plan provides for conveying the areas to the United States (U.S. Forest Service) for public recreational use.

The U.S. Forest Service has reported (letter dated July 30, 1965) that the action planned by the licensee in the Recreational Use Plan would not interfere or be inconsistent with the purposes for which the Arapaho National Forest was created or acquired.

The Department of the Interior has offered no objection to the Recreational Use Plan, insofar as it proposes replacement and establishment of campgrounds, but recommended that the Plan be modified to incorporate therein three conditions relating to public access to Lower Reservoir for fishing. In commenting on the Department's recommendations, the licensee opposed the Department's recommended public use of Lower Reservoir in view of the aforementioned expected rapid fluctuations therein due to project operation, as hazardous to the general public. The licensee expressed its hope that the

Department of the Interior would "withdraw its objection" to the Recreational Use Plan in view of the circumstances and enclosed letter from the Forest Service to the licensee, dated October 20, 1965, expressing the Service's opposition to public use of Lower Reservoir. It is our view that the problem involving possible use of either or both of the project reservoirs for fishing can be resolved in the light of actual project operating conditions, within the purview of Article 44 of the license which requires the licensee to participate with the Forest Service, the U.S. Fish and Wildlife Service, and the Colorado Department of Game, Fish and Parks in a study which the licensee will use to develop the fishery potential of the project area.

The Governor of the State of Colorado has advised that the State supports the Recreational Use Plan.

The Commission finds:

It is consistent with the public interest to approve the aforementioned Recreational Use Plan as part of the license for the project as hereinafter provided.

The Commission orders:

The following designated Recreational Use Plan is hereby approved as part of the license for Project No. 2351:

Exhibit R, including drawings FPC No. 2351–40, and FPC No. 2351–41 subject to the stipulation that the deed of conveyance by the licensee to the United States of "Chicago Lakes" as shown on drawing FPC No. 2351–40, shall contain a covenant that the land conveyed shall be forever available for public recreational use and the covenant shall expressly state that "it is agreed between the licensee and the United States that this said covenant is a covenant running with the land".

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WEST PENN POWER COMPANY, DOCKET NO. E–7251

ORDER AUTHORIZING LEASE OF ELECTRIC FACILITIES

(Issued February 25, 1966)

West Penn Power Company (West Penn), filed an application with the Federal Power Commission on October 14, 1965, seeking an order pursuant to Section 203 of the Federal Power Act, authorizing it to lease the entire electrical facilities of the Borough of Tarentum (Tarentum), Allegheny County, Pennsylvania.

West Penn is incorporated under the laws of the State of Pennsylvania and authorized to do business in the States of Pennsylvania and West Virginia. It is an operating public utility engaged in the production, distribution and sale of electricity in the greater portion of the Counties of Armstrong, Butler, Fayette, Greene, Washington, and Westmoreland, and in parts of Allegheny, Cameron, Centre, Clarion, Clinton, Elk, Indiana, Lycoming, McKean, and Potter Counties, Pennsylvania. It interchanges power with the Monongahela Power Company in West Virginia and with the Potomac Edison Company in Maryland.

Tarentum is located in Allegheny County approximately 15 miles northeast of Pittsburgh and operates an isolated electric utility system within its corporate limits. Tarentum is completely surrounded by the service area of West Penn.

The assets to be leased consist of the entire electric facilities of Tarentum, including all the rights and property, real and personal, tangible and intangible, comprising Tarentum's electric utility system except: cash; bills, notes and accounts receivable; corporate records and accounts; office furniture, fixtures, equipment, and supplies; and transportation equipment.

The application states that the term of the lease is 30 years and that in consideration of the lease, Applicant will pay Tarentum a total rental of $4,200,000 in annual installments of $140,000. Tarentum does not maintain records in the form prescribed by the Uniform System of Accounts and the original cost of the facilities involved is not known. West Penn estimates that the depreciated original cost of the facilities to be leased is $156,696. The facilities are to be operated by West Penn for the same purposes for which they are presently being used by Tarentum. The application states that West Penn obligates itself to construct electric facilities connecting the leased facilities with its system and guarantees minimum salvage value of $75,000 for Tarentum's generating equipment. Under the terms of the lease agreement West Penn will make such improvements and extensions of Tarentum's system as may be necessary. At the end of the lease period Tarentum has the option to acquire the improvements made by West Penn during the term of the lease. The price to be paid by Tarentum for such improvements will be determined by an appraisal to be made in accordance with the terms of the lease.

West Penn proposes to record the entire annual rent of $140,000 in account 426, Other Income Deductions, of the Commission's Uniform System of Accounts.

According to the application the proposed transaction will result in improved and more reliable service to the electric customers of Tarentum. The application indicates that West Penn with its large generating capacity could more efficiently and more economically take care of the growing needs of Tarentum inhabitants and that by reason of its interconnections and its substantial and conveniently located resources of men, material and equipment, West Penn can restore service promptly in case of interruption.

According to the application Tarentum's present electric rates for many of its customers are about 25 percent higher than West Penn's filed rate tariffs and residential kwh usage in Tarentum is only a little more than 50 percent of the average usage of the company's residential customers. West Penn represents that the proposed transaction will have an immediate effect of reducing the rates of most of the customers of Tarentum. Applicant states that Tarentum serves 2,396 residential customers, 395 commercial customers, and 7 industrial customers making a total of 2,798. A total of 2,663 customers will receive reductions in rates which (except for four customers whose reduction will be 12%) will range from 20.7% to 31.4%. The remaining 135 customers will continue at their present rates as long as they receive energy at their present locations, and their bills are lower than Applicant's applicable rates.

Written notice of the application has been given to the Pennsylvania Public Utilities Commission and the Governor of that state. Notice was also published in the Federal Register on October 29, 1965 (30 F.R. 13799), stating that any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1965, file with the Federal Power

Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received. By order dated December 6, 1965, the Pennsylvania Public Utilities Commission approved the above described transaction.

The Commission finds:

(1) West Penn, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of Pennsylvania and consumed in the States of West Virginia and Maryland, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. West Penn, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, West Penn will indirectly merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Tarentum, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed lease of facilities by West Penn as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed lease by West Penn of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) West Penn shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and as proposed in the application.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WORK ORDER AND PROPERTY RECORD SYSTEM IN UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR CLASS C PUBLIC UTILITIES, LICENSEES AND NATURAL GAS COMPANIES, DOCKET NO. R-288

ORDER NO. 318

PRESCRIBING ELECTRIC AND GAS PLANT INSTRUCTIONS

(Issued February 28, 1966)*

The Commission, in this order, is amending the Uniform System of Accounts applicable to Class C public utilities, licensees and natural gas companies, to require that all construction and retirement of electric and gas plant, respectively, be recorded by work orders or job orders and other detail and be maintained in relation to plant additions or retirements.

On October 26, 1965, we issued a Notice of Proposed Rulemaking in this proceeding, published it in the Federal Register on November 2, 1965 (30 F.R. 13877) and, thereby, invited the submission of comments concerning the proposal. No responses have been received.

An instruction similar to the one here prescribed has always been included in the system of accounts applicable to Class A and B companies, but at the time the system was being drafted in cooperation with the National Association of Railroad and Utilities Commissioners it was felt that the requirement might be too much of a burden on the small Class C companies. Latterly, however, several of the state commissions have experienced difficulties because of the lack of a work order accounting system for the Class C companies and, as a result, the Committee on Accounts of the NARUC included the following recommendation in the minutes of a meeting held on April 20 and 21, 1965:

> The present System of Accounts for Class C Electric, Gas and Water Utilities does not specifically require a work order system in accounting for plant. The consensus of opinion was that this class of utilities is large enough that a work order system should be maintained, and that it was the only feasible way in which accurate records could be maintained of construction costs. Accordingly, it was recommended that paragraphs (a) and (b) of Utility Plant Instruction 11 of the Class A and B System of Accounts be adopted also for Class C Utilities.

The Commission therefore finds:

In view of the foregoing, it is necessary and appropriate for the administration of the Federal Power Act and Natural Gas Act that the amendments to the Uniform System of Accounts, as proposed in the notice of proposed rulemaking heretofore issued in this proceeding, now be prescribed.

The Commission, acting pursuant to the authority of the Federal Power Act, as amended, particularly sections 301 and 309 thereof (49 Stat. 854, 858; 16 U.S.C. 825, 825h) and the Natural Gas Act, as amended, particularly sections 8 and 16 thereof (52 Stat. 825, 830; 15 U.S.C. 717g, 717o), *orders:*

(A) The Uniform System of Accounts, prescribed for Class C public utilities, licensees and natural gas companies by Part 104, Subchapter C, and Part 204,

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*Published in the Federal Register on March 4, 1966 (31 F.R. 3391).

Subchapter F, respectively, of Chapter I, Title 18 of the Code of Federal Regulations, are amended by adding to the Plant Instructions contained in each, the following new paragraph 13:

"Part 104 Uniform System of Accounts for Class C Public Utilities and Licensees. * * *

Electric Plant Instructions

* * * * * * *

13. *Work Order and Property Record System Required.*

A. Each utility shall record all construction and retirements of electric plant by means of work orders or job orders. Separate work orders may be opened for additions to and retirements of electric plant or the retirements may be included with the construction work order, provided, however, that all items relating to the retirements shall be kept separate from those relating to construction and provided, further, that any maintenance costs involved in the work shall likewise be segregated.

B. Each utility shall keep its work order system so as to show the nature of each addition to or retirement of electric plant, the total cost thereof, the source or sources of costs, and the electric plant account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly.

* * * * * * *

Part 204 Uniform System of Accounts for Class C Natural Gas Companies. * * *

Gas Plant Instructions

13. *Work Order and Property Record System Required.*

A. Each utility shall record all construction and retirements of gas plant by means of work orders or job orders. Separate work orders may be opened for additions to and retirements of gas plant or the retirements may be included with the construction work order, provided, however, that all items relating to the retirements shall be kept separate from those relating to construction and provided, further, that any maintenance costs involved in the work shall likewise be segregated.

B. Each utility shall keep its work order system so as to show the nature of each addition to or retirement of gas plant, the total cost thereof, the source or sources of costs, and the gas plant account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly."

[Secs. 301, 309, 49 Stat. 854, 858, 16 U.S.C. 825, 825h; secs. 8, 16, 52 Stat. 825, 830, 15 U.S.C. 717g, 717o.]

(B) The amendments here prescribed shall be effective March 30, 1966.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP66-12

ORDER DENYING INTERVENTION AND PERMITTING PARTICIPATION AS AMICUS CURIAE

(Issued February 28, 1966)

The Commission on October 4, 1965, 34 FPC 1099, issued an order in the above-styled proceeding setting for hearing the question of whether Texas Eastern Transmission Corporation (Texas Eastern) is legally or equitably entitled to the refundable amounts now being retained by its suppliers. On October 29, Tennessee Gas Transmission Company (Tennessee), filed a petition to intervene.[1] In support thereof, Petitioner urges that a determination of Texas Eastern's obligations to flow-through refunds from its producer-suppliers in this proceeding could "have a pronounced effect on natural-gas companies" and is of vital interest to Tennessee. It alleges that it is now paying or will in the immediate future be paying increases in rates to its producer-suppliers totaling about $7.5 million annually "for which it has not filed rate increases to recoup", and that it may in the future be due a material portion of such increases as refunds. On the basis thereof, Tennessee claims that it has direct and substantial interests which might be adversely affected by the outcome of this proceeding, and that it may be bound by Commission action in this proceeding.

It is our view that Tennessee's petition does not allege any right or interest to intervene contemplated by the Natural Gas Act and our Rules of Practice and Procedure thereunder. Tennessee is neither a customer of Texas Eastern nor a customer of a customer, nor does it fall within the classes of petitioners enumerated in our rules. Admittedly a determination in this proceeding would have such precedential effect as is attributable to other Commission determinations, depending, of course, on the facts in the proceedings in which it is sought to be used as a precedent. Tennessee's general allegation that it "may be bound" by a determination herein if and when it is involved in a similar proceeding is not a present and direct interest warranting its intervention herein. Accordingly, we find that Tennessee's petition should be denied. However, we shall permit Tennessee to participate herein as *amicus curiae.*

The Commission orders:

(A) The Petition to Intervene filed by Tennessee Gas Transmission Company on October 29, 1965 is denied.

(B) Tennessee is permitted to participate in this proceeding as *amicus curiae.*

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[1] Petitions to intervene were due on or before October 26, 1965; no objections to Tennessee's petition have been received.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION GAS SYSTEM, INC. AND CITIES SERVICE GAS COMPANY.
DOCKET NO. CP66-177

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 28, 1966)

On December 2, 1965, Union Gas System, Inc. (Applicant) filed in Docket No. CP66-177 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Cities Service Gas Company (Respondent) to make a physical connection between its transmission facilities and Applicant's proposed facilities and to sell and deliver up to 150 Mcf of natural gas per day to Applicant, as more fully set forth in the application.

Applicant requests that Respondent be directed to make the physical connection between Respondent's 16-inch transmission line and Applicant's proposed 2-inch lateral pipeline. The 2-inch lateral will extend four miles northward from the point of connection to the community of Kickapoo in Leavenworth County, Kansas. Applicant will also construct and operate a distribution system to serve the community.

Applicant states that the area to be served has a population of approximately 262, with 75 residences in Kickapoo and along the lateral lines. The estimated requirements for natural gas for the area are as follows:

	First year	*Second year*	*Third year*
Peak day (Mcf)	99	123	150
Annual (Mcf)	7, 515	9, 352	11, 356

The estimated cost of construction of the proposed lateral and distribution system are estimated to be $32,464, which will be financed from treasury cash.

The service will be rendered pursuant to Respondent's F-2 Rate Schedule.

The Kansas State Corporation Commission certified the proposed service area to Applicant by its order issued October 20, 1965, in its Docket 76, 160-U.

Respondent has no objection to the granting of the application, provided the order is conditioned so that delivery pressure will not be required to exceed 125 psig.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on December 16, 1965 (30 F.R. 15507). On December 20, 1965, the Kansas State Corporation Commission filed a notice of intervention which was withdrawn on January 17, 1966. No other notice of intervention, protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicant is a public utility company in the State of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 150 Mcf of natural gas per day to Applicant for resale and distribution in the community of Kickapoo and environs in Leavenworth County, Kansas, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Delivery pressure for volumes of natural gas to be delivered pursuant to this order will not be required to exceed 125 psig.

(D) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AMERADA PETROLEUM CORPORATION, ET AL.[1], DOCKET NO. G-16117, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AS TO CONTRACTUAL ISSUES AND PRESCRIBING REFUNDS

(Issued March 1, 1966)

There is before us for consideration a Petition for Approval of Settlement Proposal filed on December 16, 1965, by forty-three Respondents in these proceedings, encompassing 187 of Respondents' currently effective FPC Gas Rate Schedules for sales of natural gas to El Paso Natural Gas Company in the Permian Basin area (with the exception of one sale made in Texas Railroad Commission District No. 7-B).[2] The proposed increased rates involved herein, each of which were suspended by order of the Commission, and most of which were duly made effective by Respondents, subject to refund, were filed under favored-nation clauses that were then contained in Respondents' FPC Gas Rate Schedules, based directly or indirectly on spiral escalation increases filed by Phillips Petroleum Company (Phillips) for certain of its sales of natural gas to El Paso which had also been suspended by order of the Commission, and placed in effect subject to refund.

On December 4, 1963, 30 FPC 1400, the Commission by order approved a rate settlement proposal which had been filed by El Paso which required a reduction of the increased rates it was collecting subject to refund. Consequently, Phillips filed with the Commission proposed rate reductions in accordance with the spiral escalation clauses for certain of its sales of natural gas to El Paso where Phillips' increased rates had been based on El Paso's increased rates. On April 3, 1964, the Commission accepted Phillips' proposed rate reductions, subject to further Commission order, 31 FPC 774.

Subsequently, the Commission by letter-orders issued herein on February 26, and March 24, 1965, ordered the Respondents to reduce each of its favored-nation increased rates which had been based on Phillips' spiral escalation increases in the same manner utilized to compute the increased rates, and to make appropriate refunds to El Paso. Five of the Respondents filed applications for rehearing of the Commission's letter-orders setting forth matters which the Respondents alleged had not been fully considered by the Commission prior to issuance of its letter-orders. Consequently, the Commission, by a show-cause order issued on April 26, 1965, 33 FPC 885, set such contractual matters for hearing as to said five Respondents and stayed the effect of its letter-orders as to the remaining Respondents. Additionally, the order of April 26, 1965, directed the Presiding Examiner to hold a pre-trial conference on June 2, 1965. Prior to such pre-trial conference, settlement conferences were initiated, and attended by virtually all of the interested parties to these proceedings. The Presiding Examiner granted continuances from time to time to permit the settlement conferences to continue. The instant proposal is the outcome of such settlement conferences.

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[1] The additional respondents and dockets involved herein are set forth in the appendix hereto.

[2] On December 28, 1965, Sun Oil Company filed its joinder in the proposal.

In summary the settlement proposal as filed by the Respondents provides:

(1) Each Respondent will refund to El Paso the amounts of monies set forth on Appendix C to the settlement proposal, with interest at six percent per annum, to January 1, 1966, with the last refundable monies charged and collected to be the first monies refunded;

(2) The refunds to be made under (1) above shall constitute settlement in full of any claim for refunds based on any contended lack of contractual support for the rates involved in these proceedings;

(3) Each Respondent shall file appropriate rate schedule supplements, within forty-five days after final order of the Commission approving the settlement proposal, to reflect the settlement rates set forth in Appendix B to the settlement proposal, plus applicable tax reimbursement, and such settlement rates shall not be subject to further downward adjustment because of further reduction in El Paso's rates or consequent reduction of Phillip's spiral rates based thereon;

(4) The settlement rates filed in accordance with (3) above shall be subject to ultimate determination as to their justness and reasonableness in any proceeding instituted for that purpose, including but not limited to the Permian Basin Area Rate Proceeding, Docket No. AR61-1, *et al.;*

(5) The show-cause order of April 26, 1965, be withdrawn, and the proceedings be terminated as to the contractual issues.

In support of the proposal, Respondents state that many substantial legal and factual issues would be involved in a formal hearing of these proceedings, regarding the contractual issues involved, because many of the Respondents were differently situated with regard to the manner of their application of the Phillips' spiral rate increases, and the timing of the filing of Respondents' proposed rate increases based directly or indirectly on Phillips' spirals. Additionally, there are involved many contractual issues involving the application of periodic escalation increases, and the application of favored-nations clauses contained in Respondents' contracts in regard to producer rate filings other than Phillips during the period involved herein. Hence, a hearing upon these matters would be unusually complicated, long and costly.

Approval of the settlement proposal will terminate the contractual issues involved in 127 suspension proceedings involving 264 rate increases proposed by Respondents, and will result in refunds to El Paso of $2,500,000, exclusive of interest. El Paso is required by prior order of this Commission to flow-through such monies to its purchasers under its jurisdictional sales of natural gas.

The instant settlement proposal is in the public interest and should be approved as hereinafter provided.

Our action herein shall not be construed as constituting approval of any past or future rate increases, if any, that may have been, or may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any proceedings, including area rate or similar proceedings, involving the justness and reasonableness of each of the Respondents' rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the settlement proposal, and the appendices thereto, filed by Respondents on December 16, 1965, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal filed by Respondents on December 16, 1965, is approved and made effective subject to the terms and conditions herein.

(B) The applicable settlement rates set out in the Appendix hereto are approved, and each Respondent, within 45 days from the date of issuance of this order, shall file for approval appropriate supplements to its FPC Gas Rate Schedules reflecting the contract settlement rates in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act. The effective date of each of such settlement rates shall be the date specified in the Notice issued by this Commission permitting each of the applicable proposed increased rates involved in these proceedings to become effective, subject to refund.

(C) Each of the Respondents shall within 30 days from the date of issuance of this order submit a report to the Commission, setting out the amount of refunds made in accordance with Appendix C to the settlement proposal related to each rate schedule, with applicable interest computed to January 1, 1966, and El Paso's concurrence therein, and shall within 15 days thereafter refund to El Paso such amount of monies.

(D) Upon notification by the Secretary of the Commission to each of the Respondents that it has complied with the terms and conditions of this order, the letter-orders of February 26, and March 24, 1965, and the show-cause order issued April 26, 1965, insofar as applicable to it shall be withdrawn, and said proceedings shall be deemed to be terminated as to the contractual issues involved herein, without further order of the Commission.

(E) This order is without prejudice to any finding or orders which have been made or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by each of the Respondents, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against each of the Respondents, or any other companies, person or parties affected by this order, and is not in any manner determinative of the justness and reasonableness of the settlement rates involved herein.

APPENDIX

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. G-16117, ET AL.

Respondent (a)	Docket No. (b)	Rate Schedule No. (c)	Supp. No. (d)	Rate Filed in Docket, ¢/Mcf (e)	Settlement Rate, ¢/Mcf [1] (f)
M. D. Abel, d/b/a Abel & Bancroft, Operator, et al.	G-16477 [2]	1	7	13.9840	12.83856
	G-16477 [2]	2	9	13.9840	12.83856
	G-16477 [2]	4	10	13.9840	12.83856
	G-16477 [2]	5	18	13.9840	12.83856
	G-16477 [2]	7	2	10.1699	9.33714
Amerada Petroleum Corporation	G-16117	1	20	10.9298	[3] 10.50000
	G-19488	1	21	13.3480	[3] 12.25500
	G-16117	1	20	10.4158	[4] 10.05330
	G-19488	1	21	12.9013	[4] 11.80830
	G-16256	4	9	13.3479	12.25500
	G-16118*	27	2	10.9298	10.50000
	G-19489*	27	3	13.3480	12.25500
	G-16117	31	5	10.4831	10.05330
	G-19577	31	6	12.9013	11.80830
	G-19577	55	3	13.3480	12.25500
	G-19577	56	8	13.3480	12.25500
	G-16119**	57	4	10.9298	10.50000
	G-16119**	57	4	10.4831	10.05330
	G-19490**	57	5	12.9013	11.80830
	G-16117	62	3	10.9298	10.50000
	G-19488	62	4	13.3480	12.25500
	G-19488	69	1	13.3480	12.25500
	G-19488	72	2	13.3480	12.25500

Footnotes at end of table.

APPENDIX—continued

Respondent (a)	Docket No. (b)	Rate Schedule No. (c)	Supp. No. (d)	Rate Filed in Docket, ¢/Mcf (e)	Settlement Rate, ¢/Mcf[1] (f)
The Atlantic Refining Company	G-18565**	10	3	13.9836	12.83856
	G-18913	11	3	12.9013	11.80830
	G-18913	15	5	13.3480	[3] 12.25500
	G-18913	15	5	12.9013	[4] 11.80830
	G-18913	17	4	12.9013	11.80830
	G-18913	18	6	13.3480	12.25500
	G-18913	18	6	12.9013	11.80830
	G-18913	19	4	12.9013	11.80830
	G-18913	20	10	13.3480	[3] 12.25500
	G-18913	20	10	12.9013	[4] 11.80830
	G-18913	26	6	13.9836	12.83856
	G-18913	28	17	13.9836	12.83856
	G-18913	29	8	13.9836	12.83856
	G-18913	139	2	13.3480	12.25500
W. E. Bakke, Oper., et al	G-16477 [2]	1	7	13.9840	12.83856
	G-16477 [2]	2	9	13.9840	12.83856
	G-16477 [2]	4	10	13.9840	12.83856
	G-16477 [2]	5	18	13.9840	12.83856
	G-16477 [2] [5]	7	2	10.1699	9.33714
Benedum-Trees Oil Company	G-12881	4	3	11.5050	10.79912
Cabot Corporation (SW)	G-18842	23	4	13.9836	12.83856
	G-18844 [6]	38	1	13.9836	12.83856
Charm Oil Company	G-19491	2	4	13.3480	12.25500
Continental Oil Company	G-19728 [7]	261	----------	10.1699	9.33714
L. R. French, Jr., Oper., et al	G-17347	3	2	13.9835	12.83856
	G-17347	4	6	13.9835	12.83856
Getty Oil Company	G-16533	1	5	13.9836	12.83856
	RI60-72	1	6	15.7862	14.64257
Gulf Oil Corporation	G-13100	120	6	11.5050	10.79912
Jake L. Hamon, Oper., et al	G-18327	20	1	10.1699	9.33714
Herd Oil & Gas Company	G-18769	1	3	13.9836	12.83856
Humble Oil & Refining Company	G-16415	5	24	13.9836	12.83856
	G-16416	9	7	13.3480	12.25500
	G-16416	16	9	13.9836	12.83856
	G-19487	28	5	13.3480	12.25500
	G-19487	28	5	12.9013	[3] 11.80830
	G-19487	31	9	13.3480	[4] 12.25500
	G-19487	31	9	12.9013	[3] 11.80830
	G-19487	33	4	12.9013	[4] 11.80830
	G-19487	45	5	12.9013	11.80830
	G-16416	116	2	10.1699	9.33714
	G-16416	118	7	10.1699	9.33714
	G-18172**	142	2	13.9836	12.83856
	G-19157	144	1	10.1699	9.33714
	G-17799	260	6	12.1699	11.33714
	G-18568	262	3	10.1699	9.33714
H. L. Hunt	G-16421	6	5	13.3480	12.25500
	G-16421	15	5	13.3480	12.25500
	G-16421	16	5	10.1699	9.33714
Lamar Hunt	G-17424	1	5	13.3480	12.25500
	G-16418	5	1	13.3480	12.25500
N. B. Hunt	G-16478	1	5	13.3480	12.25500
	G-16420	9	1	13.3480	12.25500
Hunt Industries	G-16423	3	5	13.3480	12.25500
	G-16423	4	5	10.1699	9.33714
Hunt Oil Co	G-13157	7	6	11.5050	10.79912
	G-16479	7	7	13.9836	12.83856
	G-13191	31	3	11.5050	10.79912
	G-16422	31	4	13.9836	12.83856
	G-16422	33	5	13.3480	12.25500
	G-16422	34	5	10.1699	9.33714
	G-16479	36	2	13.3480	12.25500
	G-18668	48	1	10.1699	9.33714
W. H. Hunt	G-17425	1	5	13.3480	12.25500
	G-16419	6	1	13.3480	12.25500
Inland Natural Gasoline	G-19992	1	2	13.9836	12.83856
E. B. McFarlin & E. P. Ketchum	G-13161	1	7	10.9298	10.50000
Northwest Production Corporation	G-16417	2	4	13.9836	12.83860
The Nueces Co., Operator	G-17165	3	1	13.3054	12.42071
Pan American Petroleum Corp	G-19998	17	8	9.3282	8.65244
	G-16480	18	7	13.9835	12.83856
	G-20006***	18	8	15.7861	14.64257
	G-16532	20	9	13.9835	[3] 12.83856
	G-19998	20	10	15.7862	[3] 14.64257
	G-16532	20	9	13.4835	[4] 12.33856
	G-19998	20	10	15.2862	[4] 14.14257
	G-16481***	21	8	13.9835	12.83856
	G-19998	21	9	15.7861	14.64257
	G-16481***	23	10	13.9835	12.83856

See footnotes at end of table.

APPENDIX—continued

Respondent (a)	Docket No. (b)	Rate Schedule No. (c)	Supp. No. (d)	Rate Filed in Docket, ¢/Mcf (e)	Settlement Rate, ¢/Mcf (f)
Pan American Petroleum Corp.—Continued	G-20006***	23	11	15.7862	14.64257
	G-16532	68	5	12.7123	11.67142
	G-20007*	68	6	14.3511	13.31143
	G-16532	101	4	13.3479	12.25499
	G-19998	101	5	15.0686	13.97701
	G-19998	101	5	14.6219	13.53030
	G-16532	110	12	13.3479	[3] 12.25500
	G-19998	110	14	15.0686	[3] 13.97701
	G-16532	110	12	12.9013	[4] 11.80830
	G-19998	110	14	14.6219	[4] 13.53030
	G-16532	110	12	10.8055	9.92071
	G-19998	110	14	12.1985	11.31472
	G-16480	129	11	13.9835	12.83856
	G-19998	129	13	15.7862	14.64257
	G-16532	133	3	12.7123	11.67142
	G-19998	133	4	14.3511	13.31143
	G-20008**	136	14	15.0686	[3] 13.97701
	G-20008**	136	14	14.6219	[4] 13.53030
	G-16532	191	2	12.0767	11.08785
	G-19998	191	3	13.6335	12.64586
	G-19998	218	1	11.4809	10.64915
	G-20452	234	2	15.0686	[3] 13.97701
	G-20452	234	2	14.6219	[4] 13.53030
	G-20452	249	3	15.0686	13.97701
	G-16425	317	2	10.1699	9.33714
Pure Oil Company, a Division of Union Oil Company of California.	G-17937	26	8	13.9688	12.82498
	G-17937	31	6	10.9158	9.77952
	G-16800	60	3	10.0619	9.94746
Redfern Oil Company	G-18770	1	3	13.9836	12.83856
French M. Robertson., Oper., et al	G-16535	1	4	12.0767	11.08785
Secure Trusts	G-16424	3	5	13.3480	12.25500
	G-16424	4	5	10.1699	9.33714
Shell Oil Company	G-12951	15	4	10.3545	9.71920
	G-17368	15	5	12.7123	11.6714
	G-16254	16	6	10.9298	[3] 10.50000
	G-16254	16	6	10.4830	[4] 10.05330
	G-12951	17	9	8.6288	8.09934
	G-16254	17	10	10.8055	9.92071
	G-12953	18	7	8.6288	8.09934
	G-16253	18	8	10.8055	9.92071
	G-12952***	19	10	8.6288	8.09934
	G-16255	19	11	10.8055	9.92071
	G-12953	20	9	8.6288	8.09934
	G-16253	20	10	10.0855	9.92071
	G-16254	33	6	10.9298	[3] 10.50000
	G-16254	33	6	10.4831	[4] 10.05330
	G-16253	34	7	10.9298	[3] 10.50000
	G-16253	34	7	10.4831	[4] 10.05330
	G-16254	40	2	10.9298	[3] 10.50000
	G-16254	40	2	10.4831	[4] 10.05330
	G-16254	41	11	10.9298	[3] 10.50000
	G-16254	41	11	10.4830	[4] 10.05330
	G-16254	95	2	10.9298	10.50000
	G-12951	108	1	11.5050	10.79912
	G-16254	108	2	13.9836	12.83856
	G-12951	134	4	8.0535	7.55938
	G-16254	134	6	10.1699	9.33714
	G-12951	142	2	11.5050	10.79912
	G-16254	142	3	13.9836	12.83856
Sinclair Oil & Gas Company	G-14060	7	7	11.5050	10.79912
	G-16534	7	8	13.9836	12.83856
	G-14060	13	4	10.3545	9.71920
	G-16534	13	5	12.7123	11.67140
	G-14060	28	2	11.5050	10.79912
	G-16534	28	3	13.9836	12.83856
	G-14060	92	3	8.0535	7.55938
	G-16534	92	4	10.1699	9.33714
	G-18326	174	2	10.6337	9.48866
	G-16537	298	6	13.9836	12.83856
Socony Mobil Oil Co., Inc	G-12981	20	8	11.5050	10.79912
	G-15448	20	10	12.7123	11.67142
	G-12982	26	7	10.4696	9.82720
	G-15449	26	8	11.5682	10.62100
	G-12981	48	2	11.5050	10.79912
	G-15448	48	4	12.7123	11.67142
	G-13030	76	4	11.5050	10.79912
	G-15449	76	6	12.7123	11.67142
	G-12982	101	8	11.5050	10.79912

See footnotes at end of table.

APPENDIX—continued

Respondent (a)	Docket No. (b)	Rate Schedule No. (c)	Supp. No. (d)	Rate Filed in Docket, ¢/Mcf (e)	Settlement Rate, ¢/Mcf[1] (f)
Socony Mobil Oil Co., Inc.—Continued	G-15449	101	9	12.7123	11.67142
	G-12982	102	6	11.5050	10.79912
	G-15449	102	8	12.7123	11.67142
	G-12982	103	7	11.5050	10.79912
	G-15449	103	9	12.7123	11.67142
	G-12982	119	1	11.5050	10.79912
	G-15449	119	3	12.7123	11.67142
	G-15995	144	1	12.0803	11.33908
	G-13311	280	5	11.5050	10.79912
Sohio Petroleum Co.	G-16477 [2]	91	7	13.9840	12.83856
	G-16477 [2]	94	9	13.9840	12.83856
	G-16477 [2]	95	10	13.9840	12.83856
	G-16477 [2]	96	18	13.9840	12.83856
	G-16477 [2]	97	2	10.1699	9.33714
Southland Royalty Company	G-19727	16	1	13.3480	12.25500
Standard Oil Co. of Texas, a Division of Chevron Oil Company.	G-13187***	22	5	10.3545	9.71920
	G-19664***	22	6	13.3480	12.25500
	G-19583	23	4	13.3480	[3] 12.25500
	RI60-337	23	5	15.0687	[3] 13.97701
	G-19583	23	4	12.9013	[4] 11.80830
	RI60-337	23	5	14.6221	[4] 13.53031
	G-19583	25	2	13.3480	12.25500
	RI60-337	25	3	15.0687	13.97701
	G-14059	28	1	8.0535	7.55938
	G-19583	28	2	10.9158	9.77952
	RI60-164	34	5	14.6221	13.53031
	RI60-164	35	5	14.6221	13.53031
	RI60-164	36	4	15.0687	[3] 13.97701
	RI60-164	36	4	14.6220	[4] 13.53031
Sun Oil Company	G-12841	1	4	11.5050	10.79912
	G-16257	1	5	13.9836	12.83856
	G-12880	30	4	11.5050	10.79912
	G-16257	30	5	13.9836	[3] 12.83856
	G-16257	30	5	13.4836	[4] 12.33856
	G-12880	58	9	10.9298	[3] 10.50000
	G-16257	58	11	13.0149	[3] 12.25500
	G-12880	58	9	10.4158	[4] 10.50000
	G-16257	58	11	12.5682	[4] 11.73363
	G-12880	61	4	10.9298	10.50000
	G-16257	61	5	13.0149	[3] 12.25500
	G-16257	61	5	12.5682	[4] 11.73363
	G-16257	65	3	12.0767	11.08785
	G-16258	80	4	13.9836	12.83856
Sunray DX Oil Company	G-19090	64	5	13.3479	12.25500
	G-13160	81	7	11.5050	10.79912
	G-16884	81	8	13.9840	12.83856
	G-13160	92	2	11.5050	10.79912
	G-16884	92	3	13.9840	12.83856
	G-13160	93	2	11.5050	10.79912
	G-16884	93	3	13.9840	12.83856
	G-13160	94	3	11.5050	10.79912
	G-16884	94	4	13.9840	12.83856
	G-19090	101	2	13.3479	12.25500
	G-19090	103	6	13.3479	12.25500
	G-19090	142	2	13.3479	12.25500
	G-19090	142	2	12.9012	11.80030
The Superior Oil Company	G-12949	8	6	11.5050	10.79912
	G-15358	8	7	12.7120	11.67140
	G-12949	9	7	11.5050	10.79912
	G-15358	9	8	12.7120	11.67140
	G-15358	10	10	10.8050	9.92071
	G-12950	30	4	11.5050	10.79912
	G-15358	30	5	12.7120	11.67140
Tenneco Oil Company	G-19728 [7]	146		10.1699	9.33714
Texaco Inc	G-13155	17	6	11.5050	10.79912
	G-16413	17	7	13.3054	12.42070
	RI60-132	17	8	14.6982	13.81472
	G-13155	18	5	11.5050	10.79912
	G-17159	18	6	13.3054	12.42070
	RI60-132	18	7	14.6982	13.81472
	G-13155	19	4	11.5050	10.79912
	G-17159	19	5	13.3054	12.42070
	RI60-132	19	6	14.6982	13.81472
	G-16413	21	9	10.8054	9.92071
	RI60-132	21	10	12.1982	11.31472
	G-13162	23	5	10.9298	10.25916
	G-16536	23	6	12.8054	11.92071

See footnotes at end of table.

APPENDIX—continued

Respondent (a)	Docket No. (b)	Rate Schedule No. (c)	Supp. No. (d)	Rate Filed in Docket, ¢/Mcf (e)	Settlement Rate, ¢/Mcf[1] (f)
Texaco Inc.—Continued	RI60-137	23	7	14.1982	13.31472
	G-13190	24	5	8.0535	7.55938
	G-16536	24	6	10.1699	9.33714
	RI60-137	24	7	11.4808	10.64915
	G-13190	24	5	10.9298	10.25916
	G-16536	24	6	12.8054	11.92071
	RI60-137	24	7	14.1982	13.31472
	G-16414	25	7	10.8054	9.92071
	RI60-142	25	8	12.1982	11.31472
	G-16414	168	5	10.1699	9.33714
	RI60-142	168	8	11.4808	10.64915
	G-14062	169	1	10.9298	10.25916
	G-16536	169	2	12.8054	11.92071
	RI60-137	169	3	14.1982	13.31472
Tidewater Oil Company	G-14185	4	5	11.5050	10.79912
	G-16259	4	6	13.9836	12.83856
	RI60-71	4	7	15.7862	14.64257
	G-14061	17	9	11.5050	10.79912
	G-16259	17	10	13.9836	12.83856
	RI60-70	17	11	15.7862	14.64257
	G-16260	38	9	13.3479	12.25500
	RI60-70	38	10	15.0687	13.97701
	G-16259	39	10	13.3479	12.25500
	RI60-71	39	11	15.0687	13.97701
	G-16260	43	11	13.3479	12.25500
	RI60-70	43	13	15.0687	13.97701
	G-16260	43	11	12.9012	11.80830
	G-16259	50	8	13.9836	12.83856
	RI60-71	50	9	15.7862	14.64257
Union Texas Petroleum, a Division of Allied Chemical Corporation.	G-16889	12	3	13.3054	12.42070
	G-18951	12	4	13.9836	12.83856
	G-16888**	64	10	13.3054	12.42070
	G-18952**	64	11	13.9836	12.83856
Warren Petroleum Corporation	G-12842	22	6	11.5050	10.79912
	G-16114	22	7	13.3054	12.42070
	G-18560	22	8	13.9835	12.83856
	G-15304	28	5	10.8054	9.92070
	G-18517***	28	6	11.4835	10.33860
	G-15310***	30	3	13.3054	12.42070
	G-18471***	30	4	13.9835	12.83860
	G-15311	42	9	13.3054	12.42070
	G-18560	42	10	13.9835	12.83860
	G-15310***	43	9	13.3054	12.42070
	G-18471***	43	10	13.9835	12.83860
	G-18467***	44	4	13.9835	12.83860
	G-15311	45	3	13.3054	12.42070
	G-18560	45	4	13.9835	12.83860
Western Natural Gas Company	G-19252 [8]	3	3	13.3480	[3] 12.25500
	G-19252 [8]	3	3	12.9012	[4] 11.8 830
West Lake Natural Gasoline Company	G-19156**	1	3	13.9836	12.83856

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* *Et al.*

** Operator (*et al*).

*** Operator.

[1] Exclusive of tax reimbursement.

[2] W. E. Bakke (Operator), *et al.*, Sohio Petroleum Company (Operator), *et al.* and M. D. Abel & Bancroft (Operator), *et al.* are co-respondents in Docket No. G-16477. Rate schedule filings to be made by Sohio Petroleum Company.

[3] High Pressure Gas.

[4] Low Pressure Gas.

[5] W. E. Bakke required to make rate schedule filing with respect to the Grady "A" Lease.

[6] Cabot Corporation (SW) and Sinclair Oil and Gas Company are co-respondents in Docket No. G-18844. The rate schedule of Cabot Corporation (SW) has been redesignated Sinclair Oil & Gas Company FPC Gas Rate Schedule No. 222. Sinclair is required to make the rate schedule filings.

[7] Continental Oil Company and Tenneco Oil Company are co-respondents in Docket No. G-19252.

[8] Western Natural Gas Company and Sinclair Oil & Gas Company are co-respondents in Docket No. G-19252. The rate schedule of Western Natural was redesignated as Sinclair Oil & Gas Company FPC Gas Rate Schedule No. 265. Sinclair is required to make the rate schedule filings.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E-7206; THE DETROIT EDISON COMPANY, DOCKET NO. E-7207

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA

(Issued March 1, 1966)

The Detroit Edison Company (Edison) is a corporation organized and existing under the laws of the State of New York and qualified to do business as a foreign corporation in the State of Michigan with its principal place of business in Detroit, Michigan. Consumers Power Company (Consumers) is a corporation organized and existing under the laws of the State of Maine and qualified to do business as a foreign corporation in the State of Michigan with its principal place of business in Jackson, Michigan. On January 26, 1966, Edison and Consumers filed an application for reinstatement of, and amendment to, an earlier joint application for an order authorizing the transmission of electric energy from the United States pursuant to Section 202(e) of the Federal Power Act[1] and for a presidential permit[2] pursuant to Executive Order No. 10485 for the construction, operation and maintenance and connection at the international boundary of facilities for transmission of electric energy. Edison previously has been authorized to transmit to The Hydro-Electric Power Commission of Ontario (Hydro) not to exceed 1,000,000,000 kwh of electric energy per year at a rate of not to exceed 600,000 kva. In the instant application, permission is requested to increase the rate of transmission to a maximum of 750,000 kva. Edison's transmission was pursuant to an existing Agreement between Edison and Hydro through which the facilities of Edison and Hydro were operated in coordination. Applicants propose to replace that coordination agreement with a new agreement coordinating the facilities of Consumers, Edison and Hydro.

Coordination under the earlier Agreement had been accomplished over two transmission ties, one over the Detroit River connecting Edison's Waterman Station located on the property of its Delray Power Plant in Detroit, Michigan with Hydro's J. Clark Keith generating station near Windsor, Ontario, and another over the St. Clair River between Edison's Marysville Station at its Marysville Power Plant near Marysville, Michigan and Hydro's Sarnia transformer station located in the vicinity of Sarnia, Ontario.[3] Edison proposes to add another transmission line tie over the St. Clair River to connect its St. Clair station located on the site of its St. Clair Power Plant in East China Township near St. Clair, Michigan and Hydro's Lambton generating station to be located near Courtright, Ontario and has requested a permit pursuant to the provisions of Executive Order No. 10485 to construct, operate, maintain and connect that tie for ultimate operation at 345 kv, but for initial operation at 120 kv.

Under the new agreement, the Michigan Pool (which consists of both Applicants) and Hydro will share reserves. Each will make available, during emergencies, generating capability in excess of its load requirements up to the limit of the capability of the interconnections. At other times, the interconnections will be used for exchanges of economy energy which is surplus to each system.

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[1] Docket No. E-7206.

[2] Docket No. E-7207.

[3] Authorized by Presidential Permit signed by the Chairman of the Federal Power Commission on October 12, 1953 and accepted by Applicant on October 21, 1953 (12 FPC 1359).

The amendment revises an earlier application filed November 13, 1964, including a proposed contract between the Michigan Pool and The Hydro-Electric Power Commission of Ontario. In that application, Applicants included certain operating restrictions which were designated as Supplement C to the new contract pursuant to which the proposed transmission would take place. The Supplement C restrictions served no operating purpose, but were designed solely to avoid the comprehensive jurisdiction of this Commission under Title II of the Federal Power Act. Applicants' status as "public utilities" within the meaning of the Federal Power Act which is a prerequisite to that comprehensive jurisdiction, is presently being determined in Docket No. E-7234.

In the earlier application, Supplement C provided:

Supplement C to Interconnection Agreement

1. It is the intent of the parties to this interconnection agreement to assure continuation of the operation of their systems within the scope of Section 202(f) of the Federal Power Act which provides that, "The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part." Therefore, as in the past, any energy which Michigan may export to Hydro is to be used only within Canada, and any energy which Michigan may import from Hydro is to be generated wholly within Canada.

2. In order to assure that Michigan energy exports are always consumed wholly within Canada all of the following conditions must exist while Michigan is delivering energy to Hydro:

(a) The direction of energy flow as monitored at the Beck #2 terminals on each of the five 230 kv, 60-cycle lines and the 115 kv, 60-cycle Beck-Caledonia line shall be in a westerly direction. Michigan will be advised if a reversal of direction appears remotely possible which could only occur under very unusual conditions. Energy delivery from Michigan will then be reduced or discontinued to prevent such reversal of direction.

An exception to the above can be made if the direction of energy flow on all 60-cycle Hydro-New York interconnections at Niagara Falls is towards Hydro. Recording meter charts for the above six lines shall be mailed to Edison each week for retention.

(b) During periods of 25-cycle energy flow from Hydro to New York the direction of energy conversion through the frequency converters at Buchanan Transmission Station and Beck #1 Generating Station must be towards the 60-cycle Hydro system, or the existence of one or more null points within Hydro's 25-cycle system must be demonstrated, beyond which points Michigan energy cannot pass.

3. In order to assure that Hydro energy deliveries to Michigan are always wholly generated within Canada all of the following conditions must exist while Hydro is delivering energy to Michigan:

(a) Hydro will not schedule energy delivery to Michigan coincident with a purchase, including water transfers, of 60-cycle energy from New York unless a physical break is made in Hydro's 60-cycle system, or the existence of one or more null points in that system are demonstrated, beyond which points New York energy cannot pass.

(b) During periods of 25-cycle energy flow from New York to Hydro the direction of energy conversion through the aforesaid frequency converters must be towards the 25-cycle system, or the existence of one or more null points in Hydro's system must be demonstrated, beyond which points New York energy cannot pass.

4. Hydro shall inform Michigan of any changes of Hydro facilities which will alter paths for possible energy flows between New York and Michigan.

5. Fault conditions on either of the connected systems of the parties will be cleared up as rapidly as possible, usually within a few minutes, and normal conditions of transmission and generation will be restored. When this is not possible, continued emergency assistance is permissible within the limits outlined in 2 and 3 above.

On the basis of the applications with the contractual operating restrictions we could not determine without hearing whether the Applicant met the standards imposed by law.

On September 24, 1965, 34 FPC 964, we terminated the proceeding for want of prosecution, without prejudice to reinstatement of the applications at any time.

Applicants have now amended the proposed contract to provide for the addition to Supplement C, the following paragraph 6:

The foregoing operating instructions shall remain in effect subject to the proviso that they shall not interfere with any of the companies or entities, parties hereto, obtaining any significant economies of generation and transmission available through operating or planning coordination with any other electric utility. If any of the companies or entities, parties hereto, become satisfied that compliance with the operating instructions of Supplement C will prevent such coordination and the resulting economies or improved reliability of bulk power supply, then, after notice, these operating instructions may be disregarded to the extent that they interfere with such coordination.

The last sentence of paragraph 1 of Supplement C is revised to read:

> Therefore, as in the past *and except as may be provided herein,* any energy which Michigan may export to Hydro is to be used only in Canada, and any energy which Michigan may import from Hydro is to be generated wholly within Canada. [Italic indicates revision.]

The new paragraph 6 of Supplement C frees Ontario Hydro from the operating restriction of Supplement C if it is satisfied that significant economies or improved reliability of bulk power supply can be obtained by doing so. Further, the body of the proposed contract has been amended so that if Ontario Hydro takes advantage of the new paragraph 6 of Supplement C to coordinate with utilities operating in New York state, it does not do so at the risk of the immediate termination of its present pooling agreement with the respondents herein, which it relies upon to improve the reliability of its bulk power supply. We, of course, do not here determine the effect, if any, of the contractual provisions and the operating restrictions as modified upon the jurisdictional status of the two applicants. That determination will ultimately be made in Docket No. E-7234 presently pending before this Commission.

Notice of the filing of the application was published in the Federal Register on February 1, 1966 (31 F.R. 1256), stating that any person desiring to be heard or to make any protest with reference to the application should on or before February 16, 1966, file with the Federal Power Commission, Washington, D.C. 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

The transmission of electric energy from the United States to Canada as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) Applicants be and they hereby are authorized to transmit electric energy from the United States to Canada, in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The maximum amount of electric energy which Applicants hereby are authorized to transmit from the United States to Canada is 1,000,000,000 kilowatt-hours annually, at a maximum transmission rate of not to exceed 750,000 kilovolt-amperes; such energy to be transmitted over the facilities referred to above covered by the outstanding permit also referred to above, and the new St. Clair-Lambton tie covered by the Permit requested in Docket No. E-7207, pursuant to Executive Order No. 10485 signed by the Acting Chairman of the Federal Power Commission on March 1, 1966. The limitations provided herein shall apply to the net hourly rate of transmission over all interconnections between Detroit Edison and Hydro and the net hourly transmission of kwh of energy over those interconnections.

(C) Applicant shall file with the Commission any revisions or changes in the interconnection agreement with Hydro, referred to above.

(D) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit referred to in Paragraph (B) above.

(E) Applicants shall conduct all operations, pursuant to the authorization herein granted, in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(F) Applicants shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada, pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate, reports annually, on or before February 15, showing for each month of the preceding calendar year, the kilowatt-hours of energy received and the kilowatt-hours of energy delivered over the three interconnections as a group, the maximum rate of transmission, and the consideration therefor. In addition, such reports shall show separately for each interconnection the gross monthly kilowatt-hours transmitted in each direction and the maximum rates of such transmissions.

(G) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission, accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(H) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicants.

(I) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(J) Concurrently with the service of this order, the permit signed by the Acting Chairman of the Federal Power Commission, referred to above, shall be released and a copy transmitted by the Secretary to Applicant, Detroit Edison.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP66-107

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued March 1, 1966)

On October 12, 1965, Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP66-107 an application and supplements thereto filed December 2 and 20, 1965 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of additional volumes of natural gas, all as more fully set forth in the application.

Applicant seeks authorization to extend its present 6-inch transmission line from Hurlock, Maryland, approximately 17.05 miles to Easton, Maryland, and to construct appropriate metering and regulating installations. The proposed pipeline facilities will be used to provide a total firm supply of 650 Mcf of natural gas per day to the City of Easton. The gas will be used to provide an initial quantity of 400 Mcf per day for resale to the general public by the City of Easton and 250 Mcf per day for direct consumption by the City of Easton in its electric generating plant.

The gas to be supplied by Applicant through the proposed facilities will be purchased from Transcontinental Gas Pipe Line Corporation (Transco) and the sale for resale to the City of Easton will be made under Applicant's existing G-1 Rate Schedule. The application in which Transco seeks authority for delivery of the volumes to be sold to Applicant was filed on October 5, 1965, in Docket No. CP66-91 and a certificate was granted to Transco on November 19, 1965, 34 FPC 1351. Applicant proposes to increase its firm purchases from Transco by 650 Mcf of gas per day.

The total estimated cost of the proposed facilities is $335,400 and will be financed through the liquidation of short-term government securities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 28, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G-12059, *et al.* (18 FPC 710).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of natural gas as hereinbefore described and as more fully described in the application, supplements and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) With reference to the direct firm sales to the City of Easton of 250 Mcf per day for use in the City's electric generating plant this certificate shall not entitle the customer to whom such firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its electric generating plant requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) With reference to the direct interruptible sales to the City of Easton of gas for use in the City's electric generating plant, the certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Eastern Shore for firm service to its customers.

(F) Eastern Shore Natural Gas Company's tariff sheets filed October 15, 1965, and designated as Substitute Original Tariff Sheet No. 18C, Original Tariff Sheets Nos. 18D and 49G–49K to its FPC Gas Tariff Original Volume No. 1, are accepted for filing to become effective on the date this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

INDIANA & MICHIGAN ELECTRIC COMPANY AND OHIO POWER COMPANY, DOCKET NO. E-7273

ORDER PROVIDING FOR INVESTIGATION AND FOR HEARING

(Issued March 1, 1966)*

This order directs an investigation and hearing as to the lawfulness under the Federal Power Act of the rates, charges, rules, regulations, classifications, practices and contracts for electric services to 16 municipally-owned and one investor-owned resale customers of Indiana & Michigan Electric Company (Indiana & Michigan) and 14 municipally-owned customers of Ohio Power Company (Ohio Power),[1] all as more fully identified in annexed Appendices A and B, respectively.

As a part of this investigation Indiana & Michigan and Ohio Power are being directed to submit cost of service data to this Commission within a period of 60 days, and to serve copies of such data upon the state regulatory commissions of Indiana, Michigan and Ohio respectively, and the wholesale electric customers referred to hereafter. Following receipt and examination of such data the date for formal hearing will be fixed by further order of the Commission.

Examination and analysis of data currently available to the Commission indicate that Indiana & Michigan's wholesale rates, charges, rules, regulations, classifications, practices and contracts relating to the 17 customers listed in Appendix A may result in excessive rates or charges, may be unjust, unreasonable, unduly discriminatory or preferential or may be otherwise unlawful within the meaning of the Federal Power Act. Other information available to the Commission indicates that Ohio Power's rates, charges, rules, regulations, classifications, practices and contracts relating to the 14 wholesale customers listed in Appendix B may result in excessive rates or charges, may be unjust, unreasonable, unduly discriminatory or preferential or may be otherwise unlawful within the meaning of the Federal Power Act.

Indiana & Michigan from time to time[2] tendered wholesale rate schedules for filing with this Commission following the issuance of Commission Opinion No. 458, *Indiana & Michigan Electric Company*, 33 FPC 739, April 14, 1965, subject to an express reservation of the Company's right to challenge the Commission's determination of jurisdiction by timely petition for judicial review.[3] These Indiana & Michigan rate schedule submittals cover its wholesale sales of electricity to 16 municipally-owned electric systems and 8 cooperatively-owned systems. In addition, Indiana & Michigan recently filed a superseding rate schedule for one investor-owned system, Michigan Gas and Electric Company.[4] Rate schedule designations for these municipal and investor-owned customers are as set forth in annexed Appendix A. Rate schedule designations for Indiana & Michigan's cooperative wholesale customers are as set forth in annexed Appendix C.

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*See order issued March 15, 1968 approving offer of settlement and accepting rate schedule filings, 39 FPC 272.

[1] The companies are operating affiliates and are controlled by the American Electric Power Company.

[2] Indiana & Michigan commenced filing rate schedules July 1, 1965, with its most recent filing tendered January 3, 1966.

[3] On August 6, 1965, Indiana & Michigan sought court review of Commission Opinion No. 458, *Indiana & Michigan Electric Company* v. *Federal Power Commission* (CA7, No. 15285).

[4] Indiana & Michigan also maintains rate schedules on file with this Commission covering its transactions with Northern Indiana Public Service Company, Commonwealth Edison Company, Indianapolis Power & Light Company, Public Service Company of Indiana, Ohio Power Company, Cincinnati Gas & Electric Company, Appalachian Power Company, Ohio Valley Electric Corporation and Illinois Power Company.

To date Ohio Power has not tendered rate schedules for filing with this Commission covering its wholesale electric service to 14 municipally-owned electric systems or 15 cooperatively-owned electric systems. Ohio Power serves the 14 municipalities included in Appendix B and serves Belmont Electric Cooperative, Inc., Buckeye Rural Electric Cooperative, Inc., Carroll Electric Cooperative, Inc., Guernsey-Muskingum Electric Cooperative, Inc., Hancock-Wood Electric Cooperative, Inc., Holmes-Wayne Electric Cooperative, Inc., Licking Rural Electrification, Inc., Midwest Electric, Inc., North Central Electric Cooperative, Inc., Northwestern Electric Cooperative, Inc., Paulding-Putnam Electric Cooperative, Inc., South-Central Rural Electric Cooperative, Inc., Tuscarawas-Coahocton Electric Cooperative, Inc., United Rural Electric Cooperative, Inc., and Washington Electric Cooperative, Inc.[5]

The Commission further finds:

(1) It is necessary and appropriate for purposes of carrying out the provisions of the Federal Power Act, particularly, but not in limitation of the foregoing, Sections 201, 205, 206, 208, 301, 304, 307, 308 and 309 that an investigation and hearing be instituted to determine: the lawfulness of Indiana & Michigan's rates, charges, rules, regulations, classifications, practices and contracts for service to the 17 wholesale electric customers listed in Appendix A; the lawfulness of Ohio Power's rates, charges, rules, regulations, classifications, practices and contracts for service to the 14 wholesale electric customers listed in Appendix B.

(2) It is necessary and appropriate for purposes of the Federal Power Act as referred to above and the Commission's regulations thereunder, and good cause has been shown, to accept for filing the respective rate schedules of Indiana & Michigan, to be designated and become effective as of the dates as shown in Appendices A and C.

The Commission orders:

(A) A public hearing shall be held concerning the issues as specified in finding (1) above in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., at a time to be specified hereafter by further order of the Commission.

(B) Indiana & Michigan and Ohio Power shall within 60 days from the date hereof submit special reports setting out cost and revenue data, using 1965 as the test year, showing Indiana & Michigan's costs of rendering service to the 17 customers enumerated in Appendix A herein and Ohio Power's costs of rendering service to the 14 customers enumerated in Appendix B, calculated in accordance with applicable Commission precedents, submitted in the form as prescribed in Statements A through O, Section 35.13(b)(4)(iv) of the Commission's Regulations under the Federal Power Act and, which shall include in the case of Ohio Power a statement summarizing that Company's rates, charges, rules, regulations, classifications, practices and contracts for service to its municipal and cooperative electric customers as set forth in the recital above. An original and nine conformed copies of each report shall be submitted to this Commission with copies of Indiana & Michigan's report to be served by Indiana & Michigan upon the Public Service Commissions of the States of Indiana and Michigan and each of its wholesale customers set forth in Appendices A and C and copies of Ohio Power's report to be served by Ohio Power upon the Public Utilities Commission of Ohio and each of Ohio Power's wholesale customers set forth in Appendix B and the recital above.

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[5] Ohio Power maintains rate schedules on file with the Commission covering its transactions with Kentucky Utilities Company, Commonwealth Edison Company, Ohio Edison Company, B. F. Goodrich Company, Ohio Valley Electric Corporation, Timken Roller Bearing Company, Beech Bottom Power Company, West Penn Power Company, Wheeling Electric Company, Appalachian Power Company, Central Operating Company, Cincinnati Gas & Electric Company, Indiana & Michigan Electric Company, Monongahela Power Company, Atomic Energy Commission, Cleveland Electric Illuminating Company, Columbus & Southern Ohio Electric Company, Duquesne Light Company, The Dayton Power & Light Company.

(C) In order that the issues involved herein may be properly determined, Indiana & Michigan and Ohio Power are hereby directed pursuant to the provisions of Sections 201, 307, 308 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission, during regular business hours, free access to their property and access to and the right to inspect and examine all of their accounts, records and memoranda including, but not limited to, the following, books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets; and upon staff request shall furnish copies of such material to the staff.

(D) The rate schedule submittals as designated in Appendices A and C are accepted for filing effective as of the respective dates specified therein.

(E) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules referred to in paragraph (D) above insofar as their effective dates are concerned.

(F) Acceptance of the rate schedules as referred to in paragraph (D) above is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in this or any proceeding by or against Indiana & Michigan; moreover, nothing in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification or any rule, regulation, contract or practice affecting such services or rates provided for in the rate schedules referred to in paragraph (D) above; nor shall this order be deemed as recognizing any claimed contractual right or obligation affecting or relating to such services or rates.

(G) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426, on or before 80 days from the date of issuance of this order, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

APPENDIX A

INDIANA & MICHIGAN ELECTRIC COMPANY

Rate Schedule Designations and Descriptions of Municipal Customers

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument*
FPC No. 26	4-16-63	Town of Albion, Indiana	Service Contract	11- 1-50
Exhibit A to FPC No. 26		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 26	4-16-63	do	Tariff C.P	9- 1-61
Supp. No. 2 to FPC No. 26	4-16-63	do	Terms and Conditions of Service.	5- 1-55
Supp. No. 3 to FPC No. 26 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff C.P	7- 1-64
Supp. No. 4 to FPC No. 26 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 27	4-16-63	City of Anderson, Indiana	Service Contract	4-17-57
Exhibit A to FPC No. 27		do	Supp. M-R to Terms and Conditions.	12-30-63

See footnotes at end of table.

APPENDIX A—continued

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument*
Supp. No. 1 to FPC No. 27	4-16-63	City of Anderson, Indiana	Tariff I.P	9- 1-61
Supp. No. 2 to FPC No. 27	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 27	4-16-63	do	Letter Amendment	1- 2-63
Supp. No. 4 to FPC No. 27 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff I.P	7-1 -64
Supp. No. 5 to FPC No. 27 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 28	4-16-63	City of Auburn, Indiana	Service Contract	9- 6-60
			Tariff Q.P	9- 1-61
			Terms and Conditions of Service.	**
FPC No. 29 (Supersedes FPC No. 28).	11-16-64	do	Service Contract	11-16-64
Exhibit A to FPC No. 29		do	Supp. M-R to Conditions of Service.	12-30-63
Supp. No. 1 to FPC No. 29	11-16-64	do	Tariff I.P	7- 1-64
Supp. No. 2 to FPC No. 29	11-16-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 30	4-16-63	Town of Avilla, Indiana	Service Contract	5-19-58
Exhibit A to FPC No. 30		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 30	4-16-63	do	Tariff C.P	9- 1-61
Supp. No. 2 to FPC No. 30	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 30 (Supersedes Supp. No. 1)	7- 1-64	do	Tariff C.P	7- 1-64
Supp. No. 4 to FPC No. 30 (Supersedes Supp. No. 2)	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 31	4-16-63	City of Bluffton, Indiana	Service Contract	12-17-57
Exhibit A to FPC No. 31		do	Supp. M-R to Terms and Conditions	12-30-63
Supp. No. 1 to FPC No. 31	4-16-63	do	Tariff Q.P	9- 1-61
Supp. No. 2 to FPC No. 31	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 31 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff Q.P	7- 1-64
Supp. No. 4 to FPC No. 31 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 32	4-16-63	City of Columbia City, Indiana.	Service Contract	1-18-57
Exhibit A to FPC No. 32		do	Supp. M-R to Terms and Conditions.	12-30-63
FPC No. 57 (Supersedes FPC No. 32).	10-19-65	do	Service Contract (filing date: 11-26-65).	9- 2-65
Exhibit A to FPC No. 57		do	Supp. M-R to Terms and Conditions (filing date: 11-26-65).	12-30-65
Supp. No. 1 to FPC No. 57	10-19-65	do	Tariff Q.P. (filing date: 11-26-65).	7- 1-64
Supp. No. 2 to FPC No. 57	10-19-65	do	Terms and Conditions of Service (filing date: 11-26-65).	7- 1-64
FPC No. 33	4-16-63	City of Fort Wayne, Indiana.	Service Contract	8-25-53
Exhibit A to FPC No. 33		do	Supp. M-R to Terms and Conditions.	12-30-63
FPC No. 34	4-16-63	Town of Frankton, Indiana.	Service Contract	4-10-62
Exhibit A to FPC No. 34		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 34	4-16-63	do	Tariff C.P	9- 1-61
Supp. No. 2 to FPC No. 34	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 34 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff C.P	7- 1-64
Supp. No. 4 to FPC No. 34 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 35	4-16-63	City of Garrett, Indiana	Service Contract	10-13-59
Exhibit A to FPC No. 35		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 35	4-16-63	do	Tariff Q.P	9- 1-61

See footnotes at end of table.

APPENDIX A—continued

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument*
Supp. No. 2 to FPC No. 35.	4-16-63	City of Garrett, Indiana	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 35 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff Q.P	7- 1-64
Supp. No. 4 to FPC No. 35 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 36	4-16-63	City of Gas City, Indiana.	Service Contract	5-12-59
Exhibit A to FPC No. 36		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 36.	4-16-63	do	Tariff Q.P	9- 1-61
Supp. No. 2 to FPC No. 36.	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 36 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff Q.P	7- 1-64
Supp. No. 4 to FPC No. 36 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 37	4-16-63	City of Mishawaka, Indiana.	Service Contract	12-30-57
Exhibit A to FPC No. 37		do	Supp. M-R to Terms and Conditions.	12-30-63
FPC No. 38	4-16-63	Town of New Carlisle, Indiana.	Service Contract	5- 1-56
Exhibit A to FPC No. 38		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 38.	4-16-63	do	Tariff C.P	9- 1-61
Supp. No. 2 to FPC No. 38.	4-16-63	do	Terms and Conditions of Service.	**
Supp. No. 3 to FPC No. 38 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff C.P	7- 1-64
Supp. No. 4 to FPC No. 38 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64
FPC No. 39	4-16-63	City of Niles, Michigan	Service Contract	6- 4-56
Supp. No. 1 to FPC No. 39.	4-16-63	do	Supplemental Agreement	9-20-60
FPC No. 40	4-16-63	City of Richmond, Indiana.	Interconnection Agreement.	3-16-59
Exhibit A to FPC No. 40		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 40.	4-16-63	do	Appendix (Terminal Facilities.)	**
Supp. No. 2 to FPC No. 40.	4-16-63	do	Letter Amendment	8-30-61
FPC No. 58 (Supersedes FPC No. 40).	1- 1-66	do	Service Contract and Appendix (filing date: 1-3-66).	11-15-65
Exhibit A to FPC No. 58		do	Supp. M-R to Terms and Conditions (filing date: 1-3-66).	12-30-63
Supp. No. 1 to FPC No. 58.	1- 1-66	do	Tariff I.P. (filing date: 1-3-66).	7- 1-64
Supp. No. 2 to FPC No. 58.	1- 1-66	do	Terms and Conditions of Service (filing date: 1-3-66).	7- 1-64
FPC No. 41	4-16-63	City of Sturgis, Michigan	Service Contract	3- 1-58
FPC No. 59 (Supersedes FPC No. 41).	1- 1-66	do	Service Contract (filing date: 1-3-66).	1- 1-66
FPC No. 42	4-16-63	Town of Warren, Indiana	Service Contract	2- 9-60
Exhibit A to FPC No. 42		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 42.	4-16-63	do	Tariff C.P	9- 1-61
Supp. No. 2 to FPC No. 42.	4-16-63	do	Terms and conditions of Service.	**
Supp. No. 3 to FPC No. 42 (Supersedes Supp. No. 1).	7- 1-64	do	Tariff C.P	7- 1-64
Supp. No. 4 to FPC No. 42 (Supersedes Supp. No. 2).	7- 1-64	do	Terms and Conditions of Service.	7- 1-64

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*Where instrument is a Tariff or Terms and Conditions bearing more than one date, the latest of such dates is taken as the date of instrument.

**Instrument not dated.

APPENDIX A—continued

INDIANA & MICHIGAN ELECTRIC COMPANY

Rate Schedule Designations and Descriptions for Michigan Gas and Electric Company

Rate Schedule Designation	Effective Date*	Date of Instrument	Instrument
Rate Schedule FPC No. 25 (Supersedes FPC No. 15).	1- 1-66	3- 8-50	Interconnection Agreement.
Exhibit A to FPC No. 25	None	7-17-51	Letter Agreement Establishes Initial Period Date.
Supplement No. 1 to Rate Schedule FPC No. 25.	1- 1-66	3- 8-50	Service Schedule A.
Supplement No. 2 to Rate Schedule FPC No. 25.	1- 1-66	3- 8-50	Service Schedule B.
Exhibit A to Supplement No. 2 to Rate Schedule FPC No. 25.	None	6- 6-51	Letter Agreement Establishes Effective Date Service Schedule B.
Supplement No. 3 to Rate Schedule FPC No. 25.	1- 1-66	9-11-53	Modification No. 1 to 3/8/50 Agreement—provides for relocating metering on Hartford-Lawton line.
Supplement No. 4 to Rate Schedule FPC No. 25.	1- 1-66	12- 2-55	Modification No. 2 to 3/8/50 Agreement—provides for Three Rivers interconnection.
Supplement No. 5 to Rate Schedule FPC No. 25.	1- 1-66	7- 5-60	Letter Agreement Establishes Vicksburg and Prairie Rhonde interconnections.
Supplement No. 6 to Rate Schedule FPC No. 25.	1- 1-66	9-27-60	Letter Agreement Establishes Twin Lakes interconnection.
Supplement No. 7 to Rate Schedule FPC No. 25.	1- 1-66	12-19-61	Letter Agreement and Appendix Establishes Constantine interconnection.

*30 days after completion of filing.

APPENDIX B

OHIO POWER COMPANY

Municipal Wholesale Electric Customers

Villages of:

Arcadia
Bloomdale
Carey
Cygnet
Greenwich
Ohio City
Plymouth
Republic
St. Clairsville
Shiloh
Sycamore
Wharton

Cities of:

Martins Ferry
Wapakoneta

APPENDIX C

INDIANA & MICHIGAN ELECTRIC COMPANY

Rate Schedule Designations and Descriptions of Cooperative Customers

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument
FPC No. 43A	4-16-63	United REMC (Ind.): Allen-Wells County REMC.	Service Contract (Ossian) Letter Amendment Supplemental Agreement Service Contract (Pleasant) Service Contract (Kingsland)	8-1-46 1-24-50 12-29-50 5-10-51 9-27-54
FPC No. 44A (Supersedes FPC No. 43A).	7-15-64	United REMC (Ind.): Allen-Wells County REMC.	Service Contract	7- 6-64
Exhibit A to FPC No. 44A.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 44A.	7-15-65	do	Tariff REMC	7-15-64

APPENDIX C—continued

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument*
Supp. No. 2 to FPC No. 44A.	3-29-65	United REMC(Ind.): Allen-Wells County REMC.	Letter Amendment: Consolidation with Huntington County REMC.	3-29-65
FPC No. 43B	4-16-64	United REMC (Ind.): Huntington County REMC.	Service Contract	10-15-59
			Supplemental Agreement	8-31-61
FPC No. 44B (Supersedes FPC No. 43B).	7-15-64	do	Service Contract	7- 9-64
Exhibit A to FPC No. 44B.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 44B.	7-15-64	do	Tariff REMC	7-15-64
Supp. No. 2 to FPC No. 44B.	3-29-65	do	Letter Amendment: Consolidation with Allen-Wells County REMC.	3-29-65
FPC No. 45	4-16-63	Fruit Belt Electric Coop. (Michigan).	Service Contract	10-29-57
			Supplemental Agreement	11-12-59
			Supplemental Agreement	4-29-60
			Supplemental Agreement	9-25-62
FPC No. 46 (Supersedes FPC No. 45).	11-24-64	do	Service Contract	11-24-64
Supp. No. 1 to FPC No. 46.	11-24-64	do	Schedule D, Tariff	**
FPC No. 47	4-16-63	Jay County REMC (Indiana).	Service Contract (Monroe)	9- 8-58
			Service Contract (Antiville)	11-10-59
			Service Contract (Berne)	11-10-59
			Service Contract (Bluff Pointe)	11-10-59
			Service Contract (Red Key)	11-10-59
FPC No. 48 (Supersedes FPC No. 47).	7-15-64	do	Service Contract	6-23-64
Exhibit A to FPC No. 48.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 48.	7-15-64	do	Tariff REMC	7-15-64
FPC No. 49	4-16-63	Noble County REMC (Indiana).	Service Contract (Wold Lake)	7- 3-57
			Service Contract (Brimfield)	7- 3-57
			Service Contract (Albion)	9-14-59
			Service Contract (Avilla)	9-14-59
			Service Contract (Ligonier)	9-14-59
FPC No. 50 (Supersedes FPC No. 49).	7-21-64	do	Service Contract	7-21-64
Exhibit A to FPC No. 50.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 50.	7-21-64	do	Tariff REMC	7-15-64
FPC No. 51	4-16-63	Paulding-Putnam Electric Coop., Inc. (Ohio).	Service Contract	4-12-60
			Supplemental Agreement	8-31-61
FPC No. 52 (Supersedes FPC No. 51).	7-15-64	do	Service Contract	6- 9-64
Exhibit A to FPC No. 52.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 52.	7-15-64	do	Tariff REMC	7-15-64
FPC No. 53	4-16-63	Wayne County REMC (Indiana).	Contract as amended between Public Service Company of Indiana and Wayne County REMC (Buena Vista delivery point) transferred to Indiana & Michigan:	
			Service Contract	4- 1-49
			First Supplemental Agreement.	9- 1-49
			Second Supplemental Agreement.	2- 1-50
			Indiana & Michigan amendments to transferred contract:	
			Supplemental Agreement	12-29-50
			Letter Agreement	2-11-52
			Service Contract (Modoc)	1-21-54

See footnotes at end of table.

APPENDIX C—continued

Rate Schedule Designation	Effective Date	Other Party	Instrument	Date of Instrument*
FPC No. 54 (Supersedes FPC No. 53).	7-15-64	Wayne County REMC (Indiana)	Service Contract	7- 7-64
Exhibit A to FPC No. 54.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 54.	7-15-64	do	Tariff REMC	7-15-64
FPC No. 55	4-16-63	Whitley County REMC (Indiana).	Service Contract (Whitley)	11-12-59
			Service Contract (all delivery points except Whitley).	11-12-59
			Supplemental Agreement	8-31-61
FPC No. 56 (Supersedes FPC No. 55).	7-15-64	do	Service Contract	7- 2-64
Exhibit A to FPC No. 56.		do	Supp. M-R to Terms and Conditions.	12-30-63
Supp. No. 1 to FPC No. 56.	7-15-64	do	Tariff REMC	7-15-64

*Where instrument is a Tariff or Terms and Conditions bearing more than one date, the latest of such dates is taken as the date of instrument.
**Instrument not dated.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–11217, G–13734, G–14115, G–15314, G–15315, G–18206, G–18207, G–18215, G–18417 AND G–18418

ORDER DENYING PETITION FOR CONSOLIDATION OF PROCEEDINGS, TERMINATION OF PROCEEDING AND TERMINATION OF PROCEEDINGS IN PART

(Issued March 1, 1966)*

On January 11, 1966, Phillips Petroleum Company (Phillips) filed a petition requesting that the above-docketed proceedings, insofar as they concern matters and issues regarding contractual rate levels, be consolidated with the consolidated proceedings in *Amerada Petroleum Corporation, et al.*, Docket No. G–16117, *et al.*, (Amerada) for hearing or for settlement of said contractual issue. Additionally, Phillips requests that if such issue is settled that the Commission terminate the proceeding in Docket No. G–11217, and terminate the remaining above-docketed proceedings except for the issue of the justness and reasonableness of the recomputed rates pending therein.[1]

These proceedings concern proposed increased rates for sales of natural gas made by Phillips to El Paso Natural Gas Company (El Paso) under certain of Phillips FPC Gas Rate Schedules in the Permian Basin, and Texas Railroad Commission District No. 10. The proposed increased rates were filed by Phillips under the spiral escalation and favored-nation clauses contained in the rate schedules. In an order issued herein, on April 3, 1964, 31 FPC 774, we indicated that Phillips might be required to make further rate reductions and refunds as a contractual matter in these proceedings.

On December 16, 1965, forty-three respondents in *Amerada Petroleum Corporation, et al.*, Docket No. G–16117, *et al.*, filed a rate settlement proposal in proceedings concerning proposed increased rates for sales of natural gas to

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*Reconsideration denied by order issued April 28, 1966, 35 FPC 638.

[1] We indicated in Opinion No. 338, 24 FPC 537, at 577, 578 that the only matter left open in Docket No. G–11217 was the contractual issue, the remaining dockets herein are consolidated in Docket No. AR61–1, *et al.*

El Paso in the Permian Basin and Texas Railroad Commission District No. 7–B. Each of the proposed rate increases were filed by such respondents under favored-nation clauses that were then contained in the respondents respective FPC Gas Rate Schedules, based directly or indirectly on the spiral escalation increases filed by Phillips. We are this date issuing an order in *Amerada* approving said settlement proposal, *supra*, p. 285.

Phillips avers that the contractual issues in its proceedings are directly related to the matters involved in the proceedings in *Amerada*, and, therefore, requests consolidation, termination and termination in part of its proceedings with *Amerada* on the basis of the *Amerada* settlement proposal. However, the contractual arrangements contained in Phillips' rate schedules herein appear to present different factual and legal problems from those involved in *Amerada*. Moreover, throughout the period when settlement negotiations were being conducted, Phillips made no effort to participate in the negotiations and to seek the relief it now requests by its petition.

Our denial of Phillips' petition substantially grants the requests made in the answers filed in opposition to said petition by the People of the State of California and Public Utilities Commission of the State of California, on February 7, 1966, and by Southern California Gas Company, *et al.*, on February 9, 1966.

The Commission finds:

Denial of the Petition for Consolidation of Proceedings, Termination of Proceeding and Termination of Proceedings in Part filed by Phillips on January 11, 1966, is in the public interest, and is appropriate in carrying out the provisions of the Natural Gas Act.

The Commission orders:

The Petition for Consolidation of Proceedings, Termination of Proceeding and Termination of Proceedings in Part, filed by Phillips on January 11, 1966, is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–181

ORDER GRANTING TEMPORARY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1966)

On January 18, 1966, Transcontinental Gas Pipe Line Corporation (Transco) filed an application in Docket No. CP65–181 for a temporary certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and Section 157.17 of the Commission's Regulations thereunder, requesting authority to deliver to Consolidated Edison Company of New York, Inc. (Con Ed) an additional 55,000 Mcf per day under Transco's CD–3 Rate Schedule in substitution for 55,000 Mcf per day of storage service presently being rendered under Transco's GSS Rate Schedule.

By letter-order issued June 25, 1965, the Commission denied an identical request made May 5, 1965, and that request now renewed by Transco. Transco's application in this docket has been consolidated with applications of three subsidiaries of the Columbia Gas System and a joint application of Transco, United Natural Gas Company and North Penn Gas Company in the proceedings in *Columbia Gulf Transmission Co., et al.*, Docket No. CP65–102, *et al.* Hearings in those proceedings were concluded on February 4, 1966, and that case is now in the briefing stage before the Presiding Examiner. In light of the fact that the proposed service to Con Ed is unrelated to the other issues in the consolidated proceedings, Transco contends that the issue of the proposed service to Con Ed is ripe for Commission determination. Transco asserts that it would be "highly inequitable to have any determination by the Commission in respect to the CD–3 service to Con-Edison delayed entirely until the final determination of all of the unrelated issues in Docket No. CP65–181."

Transco's instant application for temporary authorization was opposed in answers filed by the Commission staff and by Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America and was supported by Con Ed and the City of New York. Several of the filings discuss the issue of whether the substitution of service should be permitted from the standpoint of the ultimate resolution of that issue. We believe, however, that final resolution should be made only after full briefing of that matter and with the benefit of a Presiding Examiner's initial decision and we will not rule on the merits of whether Transco's application, insofar as it relates to the proposed service to Con Ed, ultimately should be granted. Whether it will then be feasible and otherwise in the public interest to sever this portion of the consolidated proceeding for separate determination is a matter upon which we will pass in light of the situation prevailing at the time exceptions are filed.

Transco, at page 4 of its application for temporary certificate points out, however:

> Unless the temporary authorization requested herein is granted promptly, it will be necessary for Transco, at appreciable investment cost, to go forward in the immediate future with further development of the Wharton Storage Field, the ultimate development of which is involved in the presently pending Docket No. CP65–182, in order to continue the rendition of the present 55,000 Mcf per day of GSS service to Con-Edison and to render the further storage service for the 1966–67 heating season which is required by Transco's other customers. On the other hand, if the Con-Edison substitute service is authorized forthwith, sufficient existing storage capacity would be available so that Transco would not be required to develop any portion of its share of the Wharton Field in the 1966 construction year, thereby saving the attendant storage investment costs during this year.

It appears that failure to grant Transco temporary authorization may necessitate the installation of storage facilities which ultimately may be unnecessary if the proposed substitution of CD–3 service eventually were to be approved. Accordingly, we will grant Transco the temporary authorization requested to take effect on April 1, 1966 and to continue for 12 months. A final decision in the proceeding resolving the issue of service to Con Ed is expected prior to the termination of that period.

The issuance of this temporary certificate is without prejudice to the ultimate determination of any issue raised in the proceeding and the determination made to issue the temporary has in no way been influenced by the air pollution issue raised by the City of New York and Con Ed.

The Commission orders:

A temporary certificate of public convenience and necessity is issued to Transcontinental Gas Pipe Line Corporation authorizing the sale and delivery of

55,000 Mcf per day of natural gas to Consolidated Edison Company of New York, Inc. under Rate Schedule CD-3 in substitution for 55,000 Mcf per day of natural gas presently being rendered under Rate Schedule GSS, subject to the jurisdiction of the Commission, upon the terms and conditions of this order. The temporary certificate shall be effective for a period of one year commencing April 1, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-227

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued March 1, 1966)

On January 17, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66-227 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, as more fully set forth in the application.

Applicant will abandon the following specific facilities:

(1) 12.6 feet of 2-inch pipeline, an alcohol injector and a positive meter station, originally constructed to serve the Longview Machine Works and presently located in Harrison County, Texas, and

(2) a positive meter station originally constructed to serve the Humble Pipe Line Company and presently located at Milepost 60.9 on Applicant's Jackson-Magnolia 6-inch pipeline in Lincoln County, Mississippi.

Service to the Longview Machine Works commenced on August 1, 1960, and the existing contract between the parties dated November 16, 1962, was cancelled effective December 4, 1965, by letter agreement between the parties dated December 9, 1965. The service to Humble Pipe Line Company commenced on July 16, 1948 (as Interstate Oil Pipe Line Company), and the existing contract between the parties dated October 11, 1963, was cancelled effective January 1, 1966, by letter agreement between the parties dated November 5, 1965.

Due notice of the filing of the application was published in the Federal Register on January 29, 1966 (31 F.R. 1220). No protest, petition to intervene or notice of intervention has been filed.

At a hearing held on February 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment within ten days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

RESERVE OIL AND GAS COMPANY (SUCCESSOR TO PRODUCING PROPERTIES, INC.), DOCKET NO. G-18570, ET AL.[1]

ORDER ACCEPTING AMENDED OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, SEVERING AND TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued March 2, 1966)

On March 15, 1965, Reserve Oil and Gas Company (Reserve) filed an offer of settlement, which it amended on May 13, 1965, relating to sales of natural gas made under fourteen of Reserve's currently effective FPC Gas Rate Schedules in various fields in Texas Railroad Commission District Nos. 2, 3 and 4. In its proposal, Reserve stated that if the Commission should accept its proposal upon certain conditions it would be unwilling to accept such an order. Upon consideration of Reserve's proposal, we found such conditions to be proper, and, therefore, by order issued June 16, 1965, 33 FPC 1266, we rejected Reserve's offer. However, the rejection was without prejudice to the filing by Reserve of an offer in accordance with the conditions we indicated would be acceptable.

In that order we pointed out that the proposed 14.6¢ settlement rates under the Second Amendment to our Statement of General Policy No. 61-1, as amended, for sales by Reserve under its FPC Gas Rate Schedule Nos. 1 and 2 to Union Texas Petroleum, a Division of Allied Chemical Corporation (Union) were not acceptable because the area price levels announced in that Statement are applicable to the resale of the subject gas by Union to Texas Eastern Transmission Corporation after gathering and processing. We also noted that the proposed settlement rates of 15¢ per Mcf under the Second Amendment for sales under Reserve's FPC Gas Rate Schedule Nos. 21 and 29 were unacceptable because no deliveries are presently being made under those rate schedules.

On October 15, 1965, Reserve filed a motion requesting reconsideration of its original proposal in the light of Opinion No. 468, 34 FPC 159, where the Commission applied the appropriate area price to pipeline quality gas regardless of the point of delivery. Reserve claims that the gas sold under its FPC Gas Rate Schedule Nos. 1 and 2 is high pressure pipeline quality gas and therefore under Opinion No. 468 it is entitled to the applicable area ceiling.

In Opinion No. 468 we determined the just and reasonable rates for all producer-respondents in the Permian Basin Area, including the rates by producers selling to intermediary producers as well as the resale of intermediary producers to pipeline purchasers after gathering and processing. Since the intermediary producer here, Union, is not before us now, we are in no position at the present time to determine the appropriate rate level for the sales by Reserve to Union, as we were in Opinion No. 468. Moreover, Opinion No. 468 does not, contrary to Reserve's contention, have any effect on the price levels announced in the policy statement outside of the Permian Basin Area. We must therefore adhere to our previous ruling in the June 16 order and shall exclude Reserve's FPC Gas Rate Schedule Nos. 1 and 2 from the settlement.

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[1] The additional dockets involved herein are set forth in the Appendix hereto.

Reserve in its motion for reconsideration indicated that if the Commission decided not to reconsider and approve its original settlement offer, it was agreeable to (1) deletion of its FPC Gas Rate Schedule Nos. 1 and 2 from the offer, (2) settlement rates of 14¢ per Mcf for sales under its FPC Gas Rate Schedule Nos. 21 and 29, and (3) inclusion of Docket No. RI66–89 (relating to a proposed increase under its FPC Gas Rate Schedule No. 24) in the offer. With these changes, we find Reserve's proposal to be consistent with our policy statement, and, therefore shall approve the same.

Under its settlement proposal, as amended, Reserve will refund monies charged and collected, subject to refund to two jurisdictional pipeline purchasers: Tennessee Gas Transmission Corporation (TGT) and Texas Eastern Transmission Corporation (TETCO). The amount of refunds is approximately $6,000, exclusive of interest. TGT acknowledges an express flow-through obligation of such monies to its jurisdictional customers. Consequently, we shall order Reserve to make such refunds to TGT. TETCO disclaims any obligation on its part to flow-through such refund monies to its jurisdictional customers, and for all of the reasons set forth in the order in *Humble Oil & Refining Company*, Docket Nos. G–9287 and G–9288, *et al.*, 32 FPC 49, we shall order Reserve to retain such refund monies pending further order of the Commission directing the nature of their disposition. In the order in *Humble* (*supra*) and in subsequent settlement orders, where we have directed certain refund monies to be retained pending further order, we have provided, in most instances, that the monies could be retained by the producer and commingled with its general assets and used for corporate purposes with a charge of 6 per cent interest thereon. However, in Opinion No. 468, *Area Rate Proceeding, et al.*, Docket No. AR61–1, *et al.*, 34 FPC 159 (issued August 5, 1965) we determined that the proper rate of interest to be paid on retained refund monies commingled with the general assets of producers authorized so to do be 4.5 per annum from the date of filing of the refund report to the date on which they are paid over to the person ultimately determined to be entitled thereto. At the time of issuance of Opinion No. 468, the prime rate of interest was 4.5 per cent per annum, and had been so since August 23, 1960. Subsequently, the Commission by order granted motions filed by producers and one pipeline company who had been ordered to retain refund monies, changing the rate of interest to 4.5 per cent per annum on such commingled funds.

On December 6, 1965, the prime rate of interest became 5 per cent per annum (Federal Reserve Bulletin, January, 1966, page 71, ftn.) and, therefore, we find the proper rate of interest to be at that rate for monies ordered to be retained after December 6, 1965, when the producer or pipeline elects to commingle such monies with its general assets pending final order of the Commission.

We believe that Reserve's settlement proposal, as amended, is in the public interest and shall approve the same. However, we desire to make it clear that acceptance of Reserve's offer of settlement, as amended, shall not be construed as approval of any future increased rate that may be filed by

Reserve under the subject rate schedules and is without prejudice to any findings or order of the Commission in any future proceeding involving Reserve's rates and rate schedules. Additionally, for all of the reasons set forth in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require Reserve to deposit the refund monies in a special escrow account or to commingle the retained refunds with its general assets pending future order of the Commission.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement, as amended, filed with the Commission by Reserve on October 15, 1965, is consistent with the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement, as amended, filed with the Commission by Reserve on October 15, 1965, is approved in accordance with the provisions of this order.

(B) Reserve shall file, within 30 days from the date of issuance of this order, notices of change in rates under its FPC Gas Rate Schedules to reflect the settlement rates and executed contract amendments in accordance with the terms of its settlement proposal, as amended, and as approved herein. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Reserve shall compute the difference between the rates collected subject to refund and the settlement rate for the sales for which it proposes to make refunds with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipe line purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

(D) Reserve shall retain the amounts shown in the report required under paragraph (C) above, subject to further order of the Commission directing the disposition of those amounts, excepting the refunds due and owing to TGT to which Reserve shall refund such monies ten days after receiving the letter from TGT required by Paragraph (C) above, with applicable interest.

(E) Reserve may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Reserve and any bank or trust company used as a depository of funds of the United States Government and the agreement shall be conditioned as follows:

(1) Reserve, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission

for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be paid out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust comany for the quarterly period.

(F) If Reserve elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention so to do within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that Reserve has complied with the terms and conditions of this order, the proceedings in the Appendix hereto shall terminate, the proceedings in Docket Nos. G–19888, G–19902, RI60–347, RI60–348, RI61–79, RI63–343, RI63–344 and RI63–345 shall be severed from the proceedings in Docket No. AR64–2, *et al.*, and the proceedings in said dockets and Docket No. RI66–89 shall terminate, all without further order of the Commission.

(H) The acceptance by the Commission of Reserve's offer of settlement, as amended, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Reserve and is without prejudice to claims or contentions which may be made by Reserve, the Commission staff, or any affected party hereto, in any proceedings.

APPENDIX

RESERVE OIL AND GAS COMPANY, DOCKET NO. G-18570, ET AL.

Rate Schedule & Supp. No.	Purchaser	Docket No.	Effective Date	Rates[1]		
				Approved	Suspended	Settlement
Texas Railroad District No. 2:						
20-12	Texas Eastern Transmission Corporation.	RI63-343	7-18-63	13.8733	14.3733	[3] 14.0
23-12	Texas Eastern Transmission Corporation.	RI63-344	7-18-63	13.8733	14.3733	[2] 14.0
27-10	Texas Eastern Transmission Corporation.	RI63-344	7-18-63	13.8733	14.3733	[3] 14.0
32-9	Texas Eastern Transmission Corporation.	RI63-345	7-18-63	13.8733	14.3733	[3] 14.0
33-10	Texas Eastern Transmission Corporation.	RI63-345	7-18-63	13.8733	14.3733	[2] 14.3733
34-7	Texas Eastern Transmission Corporation.	RI63-345	7-18-63	13.8733	14.3733	[2] 14.3733
35-6	Texas Eastern Transmission Corporation.	RI63-345	7-18-63	13.8733	14.3733	[2] 14.3733
36-7	Texas Eastern Transmission Corporation.	RI63-345	7-18-63	13.8733	14.3733	[2] 14.3733
39-9	Texas Eastern Transmission Corporation.	RI63-344	7-18-63	13.8733	14.3733	[3] 14.0
24-8	United Gas Pipe Line Company.	RI66-89	Suspended	14.0	15.485	[4] 14.6
37-5	United Gas Pipe Line Company.	RI61-79	2-19-61	7.596	14.5	[4] 14.5
Texas Railroad District No. 4:						
21-5 6	Tennessee Gas Transmission Company.	G-19902 RI60-347	4-1-60 10-21-60	11.90337	14.87589 [5] 17.02416	14.0
29-3 4	Tennessee Gas Transmission Company.	G-19888 RI60-348	4-1-60 10-21-60	11.90337	14.87589 [5] 17.02416	14.0

[1] Cents per Mcf at 14.65 psia.

[2] Reserve proposes to delete the periodic escalation provisions. Other price escalation provisions were previously eliminated.

[3] Reserve proposes to delete the periodic escalation provisions and will eliminate a pressure reduction provision which has become effective under the contract.

[4] Reserve proposes to delete the favored-nation and/or price redetermination provisions. Periodic escalations would be rescheduled to provide for 1.0¢ per Mcf every five years commencing November 11, 1968.

[5] Non-dehydrated gas. Buyer has deducted 0.21931¢ dehydration charge.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. G-9547, ET AL., RP61-18, RP63-1 AND RP65-1

ORDER AMENDING ORDER AS TO INTEREST ON REFUNDS

(Issued March 2, 1966)

On January 24, 1966, United Gas Pipe Line Company (United) filed a motion in the above-docketed proceedings requesting that the Commission amend paragraphs (H) and (I) of Opinion No. 428-A,[1] and the letter-order of November 24, 1965, in Docket No. RP61-18, *et al.*, so as to provide that the interest payable on refunds being retained by United at the direction of the Commission, and commingled with its assets be computed at the rate of four-and-one-half percent (4½%) rather than at six percent (6%) as prescribed by the Commission.

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[1] Issued September 2, 1964, in Docket No. RP63-1 (32 FPC 687).

By aforementioned letter-order of November 24, 1965, the Commission ordered United to retain certain undistributed refund monies pending further order of the Commission, subject to aforementioned paragraphs (H) and (I) of Opinion No. 428–A. United therein, and thereby, was given the option of commingling such retained monies with its general assets, and to use such monies for corporate purposes with the obligation to pay interest thereon at the rate of 6 percent per annum.

By letter dated January 7, 1966, United informed the Commission that it had elected to commingle the retained funds and pay interest thereon.

United now requests that we amend said orders to conform with our determination in Opinion No. 468, *Area Rate Proceeding*, Docket No. AR61–1, *et al.*, 34 FPC 159, issued August 5, 1965, that the appropriate rate of interest for refund monies so retained and commingled, was 4.5 percent per annum, that being the prime rate of interest at the time of the issuance of that Opinion. It is appropriate, that we amend the letter-order of November 24, 1965, to provide for an interest rate of 4.5 percent per annum on the monies United has elected to retain.

The Commission orders:

(A) The motion for amendment of the orders issued on September 2, 1964, and November 24, 1965, filed by United on January 24, 1966, is hereby granted as hereinafter provided.

(B) United shall pay interest on the refund monies it has been required by our orders to retain and which it has elected to commingle with its general assets at the rate of 4.5 percent per annum, from November 24, 1965 to the date on which such refund monies are paid over to the person or persons ultimately determined to be entitled thereto in a final order of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66–76

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 3, 1966)

On September 16, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66–76 an application and supplements thereto on October 25 and November 22, 1965 and March 2, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of additional volumes of natural gas to the Washington Natural Gas Company (Washington Natural) for resale and distribution in the Seattle area, as more fully set forth in the application and supplements thereto.

Applicant seeks authorization to (1) construct and operate 6.55 miles of 10¾-inch pipeline as a loop on its existing 8.5 mile South Seattle lateral pipeline (also 10¾-inch) and (2) modify its South Seattle Gate Station located at the end of the 8.5 mile sales lateral in King County, Washington. The proposed facilities and modifications are required to enable it to increase sales to Washington Natural Gas Company (Washington Natural) for distribution in the Seattle area.

Present design capacity of the lateral is 86,900 Mcf per day, which will be inadequate to serve the 1966 estimated gas requirements of the Seattle area attributed to normal industrial and residential growth. After installation of the proposed loop, design capacity will be 127,680 Mcf per day, an increase of 40,780 Mcf per day or 47 percent of existing capacity.

The estimated cost of the proposed construction is $342,000, which will be defrayed from currently available working funds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The proposed construction and operation of facilities and sale of additional volumes of natural gas, as hereinbefore described, and as more fully described in the application, supplements and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities and sale of additional volumes of natural gas, to Washington Natural as hereinbefore described and as more fully described in the application and supplements and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

(D) Applicant shall file pursuant to Part 154 of the Commission's Regulations an acceptable service agreement reflecting the terms and conditions of the sale and the delivery of additional volumes of natural gas to Washington Natural.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION ELECTRIC COMPANY, PROJECT NO. 2277

ORDER MODIFYING LICENSE ORDER ON REHEARING

(Issued March 3, 1966)

On August 26, 1965, 34 FPC 598, the Commission issued a license order for the Taum Sauk pumped storage plant of the Union Electric Company, Project No. 2277. On application for rehearing filed September 27, 1965, the Union Electric Company requested that several relatively minor modifications be made in the license order. Since the points raised by the Company in its application for rehearing involved primarily technical engineering questions, we granted rehearing for further consideration on October 18, 1965, 34 FPC 1169, in order to allow the Commission staff to study the situation and to confer with representatives of the Company in an effort to achieve a resolution of these problems. Pursuant to our order granting rehearing, the Staff reexamined the license provisions in the light of actual project operating conditions, and invited the Company to meet and discuss its contentions with the Staff. Such a meeting was held on January 11, 1966 during the course of which agreement was reached between the Staff and Company representatives on all matters raised in the Company's application for rehearing. The matters raised and the proposed resolution of each is set forth below, in the same sequence as they appear in the original order issuing the license.

1. *Description of Project Works.*—The Company suggested that the project description contained in the license be changed by inserting the word "about" before the numerical quantities denoting the volumes and areas of the upper and lower pools, since these figures as they originally appeared in the license application were intended by the Company to be approximations rather than precise quantities. The staff agreed that it would be desirable to include the suggested words of approximation.

2. *Article 31.*—The Company requested that Article 31 be revised to eliminate the words in brackets, as follows:

> *Article 31.* The operations of the Licensee, so far as they affect the use, storage and discharge of water from the project reservoirs, shall at all times be controlled by such reasonable rules or regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; [and the Licensee shall release water from the lower reservoir of the project at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned and as the Commission herein prescribes in Article 32 herein.]

It was contended by the Company that the bracketed clause of Article 31 is inconsistent with the specific language of Article 32, which requires water to be released from the lower pool at a rate equal to the natural inflow into the lower pool. It was further contended that the bracketed clause is merely repetitive of the sense of the first clause of Article 31 and should therefore be stricken. However, the Staff pointed out that since this clause specifically mentions Article 32, and takes it into account, the two articles could not come into conflict with each other. Moreover, the Staff suggested that since the language of Article 31 is based on that of a standard condition (see Article 6 of Form L-6 as revised September 1, 1965, 34 FPC 1114), the deletion of this clause in this license might cast doubt on the interpretation of similar clauses in many other licenses. After this discussion the Company receded from its request.

3. *Article 32.*—The Company objected to the requirement of this article that natural inflow into the lower pool be measured, contending that such a requirement could only be met by the installation of numerous gaging stations. After examination of the Company's mode of operations, the Staff agreed with the Company that the purpose of Article 32—that of providing that natural outflow from the lower reservoir approximate natural inflow—could be fulfilled by maintaining the total volume of water in the upper and lower pools at a constant amount. This could be accomplished with the Company's present equipment. Thus, it was proposed that the article be changed by adding the italicized words and eliminating the bracketed word:

> *Article 32.* The Licensee shall *employ measuring means in order to* release water over and/or through the lower dam continuously at a rate wherein the total flow from the lower pool is approximately equal to the [measured] natural inflow into the lower pool, except as modified by the Commission pursuant to Article 31 above.

4. *Article 34.*—The Company contended that the requirement of Article 34 that seepage flows from the upper reservoir be measured daily is onerous and unnecessary. As an alternative, the Company suggested that it report maximum leakage on a monthly basis but only for those months in which the maximum rate of leakage exceeded 20 cfs. The Staff concluded that the requirement of daily measurement is unnecessary here since the upper reservoir dikes are of rock-fill construction which is not subject to sudden washouts. However, the Staff felt it prudent that seepage flow rates from the upper reservoir be determined weekly, or more often if deemed necessary. This would be done by plotting the decrease in water surface elevation which is measured during a period when the plant is not in operation. More precise means might be required if deemed necessary. The Staff also thought it advisable that a Company engineer should inspect the dikes once a month, since this is a remote-control station. To accomplish these ends, the Staff proposed and the Company agreed to change Article 34 by adding the italicized words and deleting the bracketed word as follows:

> *Article 34.* The Licensee shall submit a report on the methods employed for controlling seepage from the upper reservoir, and shall submit semiannually a supplemental report on the seepage flows as measured [daily] *by reservoir level variations, or other means if required, on a weekly basis, or more often if required, and the dikes shall be inspected once a month.* The Licensee shall cause such remedial work as found necessary from time to time by the Licensee or by the Commission, provided that any major remedial work shall first have been approved by the Commission.

The Commission finds:

It is consistent with the public interest to revise the Commission's order issuing license for Project No. 2277 (issued August 26, 1965) as hereinafter provided.

The Commission orders:

The Commission's August 26, 1965 "Order Issuing License (Major)" for Project No. 2277 is hereby revised as follows:

1. The description of project works found on page 600, Paragraph (B) (ii) is changed to read:

(ii) Project works consisting of a concrete gravity dam with a gated sluice and non-gated spillway section located on East Fork of Black River at the confluence of Taum Sauk Creek; a reservoir, known as the lower pool, with a maximum normal water surface elevation of 750 feet above mean sea level, usable storage of about 4,360 acre-feet and a surface area of about 370 acres; the upper pool created by a rock-fill concrete faced dike, surmounted by a parapet wall, with a water surface which varies between elevation 1505 and 1597 feet m.s.l., storage of about 4,360 acre-feet and an area of about 54.5 acres located on top of an adjoining mountain; a tunnel and penstock leading from the upper pool to a powerhouse located on an open channel connecting to the lower pool; a powerhouse containing two reversible pump-units, each having a rated generating capacity of 175,000 kilowatts; step-up transformers and switchyard; a double-circuit 138-kv transmission line extending from the switchyard to the Rivermines Substation, a distance of about 30 miles, and appurtenant electrical and mechanical facilities, the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L:

(FPC No. 2277-3) Lower Dam, Site Plan and General Design;
(FPC No. 2277-11) Upper Pool Plan and Sections;
(FPC No. 2277-5) Pressure Tunnel & Channel Profile & Cross Sections;
(FPC No. 2277-6) Pumping & Generating Station Site Plan; and
(FPC No. 2277-7) Pumping & Generating Station, Plans & Sections.

Exhibit M:

One typewritten page entitled, "General Description of Mechanical, Electrical and Transmission Equipment," filed in the Commission June 10, 1960.

2. Article 32, page 602, is changed to read:

Article 32. The Licensee shall employ measuring means in order to release water over and/or through the lower dam continuously at a rate wherein the total flow from the lower pool is approximately equal to the natural inflow into the lower pool, except as modified by the Commission pursuant to Article 31 above.

3. Article 34, page 602, is changed to read:

Article 34. The Licensee shall submit a report on the methods employed for controlling seepage from the upper reservoir, and shall submit semiannually a supplemental report on the seepage flows as measured by reservoir level variations or other means, if required, on a weekly basis or more often, if required, and the dikes shall be inspected once a month. The Licensee shall perform or cause to be performed such remedial work as found necessary from time to time by the Licensee or by the Commission, provided that any major remedial work shall first have been approved by the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BROOKS PIPE LINE CO., DOCKET NO. CP64-121

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1966)

On January 12, 1966, Brooks Pipe Line Co. (Applicant) filed in Docket No. CP64-121 an application to amend the certificate of public convenience and necessity issued in said docket on August 10, 1964, 32 FPC 563, by increasing the authorized volumes to be transported by Applicant for Brooks Gas Corporation from 8,000 Mcf of natural gas per day to 20,000 Mcf per day, as more fully set forth in the application to amend.

By the order of August 10, 1964, Applicant was authorized to transport natural gas for Brooks Gas Corporation by means of an existing 6⅝-inch O.D. pipeline extending from a point in or near the Velrex Field Area, in Schleicher County, Texas, to the Mertzon Gas Processing Plant (Mertzon Plant) located in the Mertzon Field, Irion County, Texas. Pursuant to the agreement between Applicant and Brooks Gas Corporation, the volume was not to exceed 8,000 Mcf of gas per day unless such excess was agreed to by Applicant.

On April 15, 1964, in Docket No. CI65-700 Brooks Gas Corporation was authorized to gather gas produced by Delta Drilling Company, *et al.* (Delta Drilling) in the Velrex Field and purchased by Northern Natural Gas Company (Northern) from Delta Drilling, and to redeliver such gas to Northern after processing at the Mertzon Plant. The volume of gas to be gathered by Brooks Gas Corporation and transported by Applicant was 4,000 Mcf per day.

In Docket No. CI65-581 the Commission, by its order issued March 2, 1965, authorized Delta Drilling to sell its production from the Velrex Field to Northern pursuant to a contract dated March 13, 1964. On August 20, 1964, Delta Drilling filed an application to amend the certificate in Docket No. CI65-581 so as to authorize the sale by Delta Drilling to Northern of gas from additional acreage in the Velrex Field. This gas is also to be transported by Applicant, according to the application to amend.

Applicant states that no additional facilities will be required to render the additional transportation service.

Due notice of the subject application to amend has been given by publication in the Federal Register on January 26, 1966 (31 F.R. 1019). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued August 10, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 10, 1964, in Docket No. CP64-121 is amended by authorizing Applicant to transport volumes of natural gas for Brooks Gas which Brooks Gas gathers in the Velrex Field Area in Schleicher County, Texas, for the account of others as well as for its own account.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP66-184

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1966)

On December 6, 1965, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP66-184 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased by United Fuel Gas Company (United) from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system new and existing supplies of natural gas which will be purchased by United Fuel in various producing areas generally co-extensive with Applicant's system. Applicant transports for United Fuel natural gas purchased by the latter and delivers such gas to points near the Kentucky-West Virginia border.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and no single project will exceed a cost of $125,000. The proposed facilities will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G-15524 (20 FPC 681).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the

expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Columbia Gulf Transmission Company, to construct during the calendar year 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Fuel Gas Company.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, ET AL.,
DOCKET NO. CP64-211, ET AL.

ORDER DENYING APPLICATIONS FOR REHEARING AND DENYING STAY

(Issued March 4, 1966)

On January 6, 1966, the Commission issued its Opinion No. 484, 35 FPC 40, and accompanying order granting certificates of public convenience and necessity to El Paso Natural Gas Company (El Paso) to construct and operate certain pipeline facilities. By the same order, permanent certificates of public convenience and necessity were issued to eleven producers of natural gas.

Ten of the eleven producers have filed applications for rehearing.[1] Their arguments are directed, in the main, to the refusal of the Commission to allow initial prices in excess of the applicable area rates established in the Permian Basin Area Rate Proceeding, Opinion Nos. 468 and 468-A, 34 FPC 159, 1068. Most of their contentions have been dealt with in Opinion No. 484 or are contrary to other established precedents and need not be further discussed here. The producers present three contentions, however, which should be briefly considered.

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[1] Dalco Oil Company, February 2, 1966; Gulf Oil Corporation (Gulf), Union Oil Company of California (Union), and Phillips Petroleum Company, February 3, 1966; The Atlantic Refining Company, M. B. Rudman, *et al.*, Skelly Oil Company, and Socony Mobil Oil Company, Inc. (Socony), February 4, 1966; and W. Watson LaForce and George T. Abell on February 7, 1966.

Nine producers[2] urge that the stay granted by the Circuit Court of Appeals for the Tenth Circuit of the ordering provisions of Opinion No. 468 should prevent the Commission from applying the price levels established in Opinion No. 468 to determine the in-line initial prices in these certificate proceedings. We think that the applicable area rates established by this Commission after lengthy hearings and the opportunity for full presentations by all interested parties are the best present indication of the proper in-line prices in the area, even though these area rates are subject to court review. We do not think that the public convenience and necessity requires the issuance of certificates at prices in excess of the area rates.

Our original opinion in this proceeding stated that "the time for acceptance of the certificates will be extended until 30 days after the price, including adjustments for quality deviations, is finally determined." The same nine producers ask that a provision to this effect be embodied in an ordering clause. To remove any uncertainty which may exist, this request will be granted.

Socony complains that in Docket No. CI62–825 the gas moving under its contract dated December 28, 1960, should receive the new gas-well gas base rate of 16.5 cents per Mcf rather than the old gas base rate of 14.5 cents per Mcf. The only new matter brought forward by Socony is that it now alleges a mistake was made in dating the contract in question December 28, 1960, and it has sought to file an amendment to that contract purporting to be an agreement between the parties that an error had been made, that the correct date was March 3, 1961, and that the original contract be amended to reflect that date. This attempted filing was rejected by the Commission by letter-order of February 11, 1966, 35 FPC 221. As made clear in our Opinion No. 484 and our letter of February 11, 1966, which we here confirm, the parties will not be allowed to employ extrinsic evidence to change the date which appears on the face of the contract.

Socony also moves for stay of the order accompanying Opinion No. 484 insofar as that order would condition Socony's initial price at 14.5 cents and impose a moratorium on filing for increased rates. It urges that if it is not allowed to collect rates above 14.5 cents during the court proceedings to review our ruling, Socony will be irreparably damaged by reason of losing revenues which can never be recouped. On the other hand, if Socony is allowed to collect rates greater than that to which it is entitled, the refund of the excessive collections at some indeterminate future time is not a sufficient remedy to make whole the consumers who may suffer injury as a result of the excessive rates. Socony's motion for stay of the relevant ordering provisions will be denied.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 484 except as specified below.

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[2] All applicants for rehearing except Socony.

The Commission orders:

(A) The applications for rehearing in this proceeding are hereby denied.

(B) The order accompanying Opinion No. 484 is hereby amended by the addition of the following Ordering Paragraph:

> (Q) Any producer-applicant other than Socony Mobil Oil Company, Inc. may accept any certificate of public convenience and necessity issued by this order at any time up to 30 days after the initial price conditioned in such certificate, including adjustments for quality deviations, is finally determined.

(C) The motion of Socony Mobil Oil Company, Inc., for stay of Ordering Paragraphs (E), (F), (G), (M), (N) and (O) of the order accompanying Opinion No. 484 is hereby denied.

Commissioner Bagge *concurring* in part and *dissenting* in part:

BAGGE, *Commissioner, concurring* in part and *dissenting* in part:

I agree with the decision of the Commission relating to all applications for rehearing other than that filed by Socony Mobil Oil Company, Inc. (Socony) with respect to its sales in Docket No. CI62-825 from the Rojo-Caballos Field.

In our original order in this proceeding we granted a permanent certificate to Socony at a price of 14.5 cents per Mcf. Socony contends that it is entitled to a price of 16.5 cents per Mcf.

The gas in question is residue gas of pipeline quality derived from gas-well gas and would command a price of 16.5 cents per Mcf if it qualified as "new gas". The dividing line between new gas and old gas is January 1, 1961. The contract under which Socony's gas moves was dated December 28, 1960. Socony contends and submitted affidavits to support its contention that the actual date of final execution of the contract was March 3, 1961, rather than December 28, 1960.

In our original order, we made a specific point of the fact that Socony did not allege that the date of December 28, 1960, constituted a mistake. Subsequently Socony attempted to file an amendment to its contract under which both Socony and its purchaser agreed that the actual date of execution was March 3, 1961, and that the contract should be amended by substituting that date for December 28, 1960. In its attempted filing and in its application for rehearing, Socony now contends a mistake was in fact made, and the contract date which should have been inserted in the contract is March 3, 1961.

It is common procedure for courts to entertain an action for reformation of the provisions of a contract on the ground of mutual mistake. Whether Socony can produce sufficient evidence to persuade the Commission that a mistake was made we need not here determine. The two questions with which we are faced are: (1) whether Socony should be given the opportunity to correct what it asserts was a factual mistake and (2) whether the date recited on the face of a contract or the date of execution shall determine how gas moving under it shall be classified. The prevailing opinion concludes that the date recited in the contract shall govern and not the date of execution of the contract, even if the evidence conclusively establishes that the execution of the contract occurred at a later date.

I believe that this is an unnecessarily rigid rule which, under the circumstances presented herein, will result in a manifest injustice to Socony—an injustice which cannot be excused upon grounds of administrative convenience or the necessity of certainty in classification.

It is, of course, true that any date dividing new gas from old gas will be somewhat arbitrary. This is inevitable in any arrangement of pricing gas according to date, whether the date be the date recited in the contract, the date of execution of the contract or any other date that might be chosen. The natural gas industry has long been accustomed, however, to classification of gas on the basis of the date of execution of contracts. While the date set forth in a contract has been taken as establishing the date of execution in the absence of any evidence to the contrary, the Commission in the past has permitted evidence to be introduced as to the date of execution and has in fact employed that date rather than the date recited in the contract when the date of execution has been independently established. This will be the first instance in which the Commission has refused to allow a producer to establish that the date of execution was different from the contract date, finding that the date recited in the contract shall govern, no matter when the contract was executed. This change in the Commission's position should not be made when, as here, the effect of such a change will be to deprive a producer of a price to which he may be entitled under the prior rulings of this Commission *infra.*

It is the prevailing opinion that our present decision is in accord with the policy determined in the *Permian Basin Area Rate Proceeding*, AR61-1, Opinion No. 468, as modified in Opinion No. 468-A, 34 FPC 159, 1068. I do not so read those opinions. In the body of Opinion No. 468, at page 189, it is stated that the new gas price is to be effective "for contracts entered into on or after January 1, 1961." In Ordering Paragraph (A) of the same opinion, the Commission referred to new gas-well gas as that "sold and to be sold pursuant to contracts executed after January 1, 1961," and to old gas-well gas as that "sold and to be sold pursuant to contracts executed on or before January 1, 1961." Taken by itself this language would leave no reasonable doubt but that the date of execution, rather than the date set forth in the contract, would be decisive and would control. In Opinion No. 468-A, denying application for rehearing, the Commission was faced with a contention by the producers that the date of division between old gas and new gas should be the date of commitment to interstate commerce. In rejecting that contention, the Commission said:

> It has also been contended that contracts should not be classified as contracts for new or old gas by reason of the date of the contract, but rather on the basis of the date the gas was first committed to interstate commerce, assuming commitment occurred at a later date. We have chosen the date *set forth in the contract* because that date is precise, definite and certain, whereas the date of commitment of gas to interstate commerce is less easy of ascertainment. *We therefore do not believe any change in our decision on this issue is warranted.* (Page 1075; Emphasis supplied.)

It nowhere appears that the Commission had in mind the distinction between the date set forth in a contract and the date of execution of a contract. It does appear in Opinion No. 468-A that the Commission intended to make no substantive change in its prior decision in Opinion No. 468. This is confirmed by the fact that Ordering Paragraph (A) of Opinion No. 468 was not amended in this respect at the time of issuance of Opinion No. 468-A.

As I pointed out *supra*, prior decisions of the Commission in "in-line" price determinations would certainly justify the industry in concluding that the date of execution of the contract is the controlling date. In *Continental Oil Company*, Opinion No. 351, 27 FPC 96, the Commission selected the year 1956 as the time when "in-lineness" should be determined, saying, "It was then that the parties agreed on a price" (page 100). The Commission then spoke of the price "at the time the contract was made" as the test for "in-lineness." In *Skelly Oil Company*, Opinion No. 362, 28 FPC 401, the Commission conditioned one price for contracts "entered into prior to September 28, 1960," and another price for contracts "entered into after September 28, 1960," (page 412). In *Hassie Hunt Trust*, Opinion No. 412, 30 FPC 1438, the Commission said:

> The Commission's decision in CATCO holds that 'in-lineness' is to be decided as of the time the contracts were made since it was then the parties agreed on a price. In the four sales here under discussion it appears that on February 15, 1961, new parties agreed to sell gas from a new field under terms of an earlier contract with a different party. It would seem clear that the meeting of the minds for the sale of this particular gas took place in February 1961, and the fact that the parties chose to make the sale by ratifying an earlier contract date of another party cannot make the agreement retroactive to the earlier contract date or erase events which occurred between May 15, 1959, and February 15, 1961, and which may have led to the decision to use the earlier, higher priced contract. For this reason we believe these dockets also should be severed from this proceeding and consolidated for further hearing with the other dockets involving applications for certificates under contracts *executed* after the Policy Statement was issued. [Pages 1443, 1444, emphasis supplied.]

In *Turnbull & Zoch Drilling Company*, Opinion No. 478, 34 FPC 1001, the Commission said:

> *Bright & Schiff* sale—The Examiner concluded that the necessary meeting of the minds for the effectuation of this sale occurred in February 1961. The fact that the parties chose at that time to make the contract effective "as of" September 15, 1960, he would dismiss as immaterial. Staff, which accepting February 1961 as the time of physical signing, argues that the earlier date should control in this case and that the producer is entitled to only a 15-cent per Mcf initial price. While the matter is not entirely free from doubt we are inclined to accept the examiner's determination of February 10, 1961, as the date of execution of the contract in this case for the purpose of issuing the certificate. We may caution all parties to Commission proceedings that when, as here, the existence of a mistake in a filing comes to their attention they inform us of that fact immediately so that we may not be led into mistaken action on the basis of erroneous information (page 1007).

We turn now to the particular circumstances of the Socony sale. First, it is an extremely large sale. It involves 17,000 dedicated acres with only four wells drilled at this time. Over the period of 20 years during which production may be expected, a substantial sum of money will be involved.

Second, there is a great deal of development work still to be done on the acreage which has been dedicated by Socony. This additional development, including exploration at different depths, may bring this situation within the scope of the language set forth at pages 1071 and 1072 of Opinion No. 468-A where the Commission stated that gas from newly-discovered horizons in dedicated acreage may be permitted, prospectively, the new gas price if the evidence in the Hugoton-Anadarko proceeding indicates that the classification of such gas is needed to encourage development of additional gas supplies. The Commission noted (at page 1072) that the classification should not depend solely "on whether there has been prior dedication but rather on whether such classification will encourage the directional search for gas." Socony may thus eventually become entitled to the new gas-well gas price for some of its production under this contract despite the fact the prevailing opinion of the Commission now prevents this.

It may be contended that administrative convenience requires that a precise and definite date be fixed upon each gas contract so that the Commission will not be compelled to determine in a large number of cases whether contracts were in fact executed at a later date than the date appearing on the face of such contracts. However, administrative convenience cannot be employed to rebut the facts. I believe that the date of execution of the contract should govern and that Socony should be permitted to introduce the facts to establish, if it can, that the date of execution was subsequent to January 1, 1961. I would remand this matter to the examiner for a hearing upon the evidence to be presented.

I further dissent from the denial by the majority of Socony's motion for stay of certain ordering provisions which would condition Socony's initial price at 14.5 cents per Mcf and oppose a moratorium on filing for increased rates. Socony will be irreparably damaged if it prevails on this matter in the courts, as it will have lost the increased revenues during the period required for court review. Socony should be allowed to collect the new gas-well gas rate of 16.5 cents subject to the obligation to refund any excess collected above the rate ultimately determined to be proper. Its request for stay of the relevant ordering provisions should be granted conditioned upon no increased rate in excess of 16.5 cents per Mcf filed prior to the expiration of the moratorium and further conditioned upon the refund of any amounts collected in excess of the rate ultimately determined to be proper.

Before Commissioners: Carl E. Bagge, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-123

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 4, 1966)

On October 22, 1965, El Paso Natural Gas Company (Applicant) filed an application in Docket No. CP66-123 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain measuring and regulating facilities and the acquisition from Southern Union Gas Company (Southern Union) and operation of certain segments of transmission pipelines to be constructed by Southern Union. By the same filing, Applicant seeks authorization to sell and deliver to Southern Union natural gas for resale and distribution to consumers in the community of Lake Havasu City, Arizona, and natural gas for resale to Bagdad Copper Corporation (Bagdad Copper) for use in Bagdad Copper's mining and refining operations in Bagdad, Arizona. Those proposals are more fully described in the application.

Applicant and Southern Union have undertaken two projects designed to introduce natural gas into Lake Havasu City and Bagdad, Arizona. Applicant proposes to construct meter stations at a point adjacent to its San Juan mainline system in Mohave County, Arizona, and at a point adjacent to its Havasu crossover line in Mohave County, Arizona, at an estimated cost of $5,700 each.

Southern Union proposes to construct a 4½-inch O.D. transmission pipeline, at an estimated cost of $179,793, extending from the aforementioned San Juan mainline measuring and regulating station in a southerly direction for approximately 16.3 miles to the Lake Havasu City area. Southern Union would also construct a 3½-inch O.D. transmission pipeline, at an estimated cost of $567,269, extending from the aforementioned Havasu crossover line measuring and regulating station in an easterly direction for approximately 46.8 miles.

Applicant proposes to acquire and operate that portion of Southern Union's Lake Havasu City pipeline, estimated at 9.83 miles, representing $125,000 (less the cost of Applicant's measuring station and any title curative costs incurred by Applicant) of the total installed cost of such pipeline which is estimated to be $179,793.

Applicant also proposes to acquire and operate the initial portion of Southern Union's Bagdad pipeline, estimated at 7.17 miles, representing $100,000 (less the cost of Applicant's measuring and regulating station and any title curative costs incurred by Applicant) of the total installed cost of such pipeline which is estimated to be $567,269.

The maximum daily and annual natural gas requirements of Southern Union during the third full year of the proposed service are estimated to be, respectively, 2,388 Mcf and 476,532 Mcf for the Lake Havasu City area and 1,157 Mcf and 255,400 Mcf for the Bagdad area.

Southern Union proposes to construct distribution facilities costing an estimated $353,800, to provide service in the Lake Havasu City area.

The sales and deliveries of natural gas to Southern Union as set forth above are proposed to be made in accordance with and at rates contained in Applicant's Rate Schedules A-1 and B-1, FPC Gas Tariff, Original Volume No. 1, and Applicant states that no changes will be required in its tariff.

The cost of the facilities to be constructed and acquired by Applicant will be paid for from working funds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 4, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed acquisition of facilities from Southern Union, construction and operation of facilities, and sale of natural gas in interstate commerce, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed acquisition of facilities, construction and operation of facilities, and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas

Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, the acquisition and operation of facilities and sale and delivery of natural gas to Southern Union Gas Company, as described herein and more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. G-20510

ORDER DENYING REHEARING

(Issued March 4, 1966)

The Manufacturers Light and Heat Company (Manufacturers) on February 4, 1966, filed an application for rehearing and reconsideration of the Commission's letter-order dated January 5, 1966, 35 FPC 37, disapproving and rejecting Manufacturer's Refund Report No. 7, filed January 25, 1965. The subject report covered the flow-through to wholesale customers of refunds received from two natural gas suppliers, United Fuel Gas Company (United Fuel) and Atlantic Seaboard Corporation (Seaboard) for the period April 5, 1960 through November, 1964. On the basis of a reconciliation furnished by Manufacturers after a request therefor by the Staff and a number of conferences thereon, it became apparent that Manufacturers was proposing to retain $1,477,470 of the $12,357,720 refunded to it by the aforementioned suppliers.

The proceedings in this docket involve proposed increased rates filed by Manufacturers on December 2, 1959. Subsequently, by order issued on March 30, 1961, 25 FPC 595, the Commission approved a settlement agreement reached by the parties. The settlement agreement was based upon a stipulated cost of service reflecting costs, as adjusted, for a test period for the twelve months ended March 31, 1960.

Article III of the agreement states that certain of the gas purchase costs included in the stipulated cost of service were being collected by Manufacturers' suppliers on a contingent basis, subject to refund proceedings before the Commission. Among such contingent charges were those of United Fuel and Seaboard in Docket Nos. G–20270 and G–20272, respectively.

The issue raised by Manufacturers' application for rehearing involves the interpretation of the language of the settlement agreement with respect to Manufacturers' obligation to flow-through gas supplier refunds to its customers. The pertinent language in Article III, Section 1 is as follows:

> If, as a result of final determination in any of the foregoing supplier's proceedings, Manufacturers receives refunds applicable to the period commencing April 5, 1960 and continuing so long as rates made in compliance with this Agreement remain in effect, the ***appropriately allocable share of such refunds***, together with the interest received, shall be passed on to wholesale customers on a demand or volumetric basis or combination thereof, in the same manner as the suppliers' refunds are made. * * * [Emphasis added.]
>
> Furthermore, if as a result of final determination in any of the foregoing suppliers' proceedings said suppliers file reduced rates, Manufacturers shall ***adjust the stipulated cost of service*** included in Appendix A and will file revised tariff sheets to reflect appropriate reductions in the rates agreed to herein in the same manner as such suppliers' rate reductions are made. * * * [Emphasis added.]

Despite the obvious differences in method prescribed by the agreement for computation of refund flow-through and for computation of reduction in rates, Manufacturers would read the above underscored language as being identical and seeks to determine its refund flow-through obligation by adjustment to the stipulated cost of service.

The Commission rejected the refund proposal on the grounds that Manufacturers had employed an improper method for computing refunds (*i.e.*, a recomputation of cost-of-service and resulting rates as opposed to a straight volumetric flow-through of the refunds received). The method used conformed with that prescribed in a previous docket, Docket No. G–12197, but is improper for use in Docket No. G–20510, since the refund provision in Docket No. G–20510 does not prescribe that particular method for distributing refunds, as it does for computing rate reductions. The prior docket (G–12197) prescribed the cost of service method for both refunds and rate reductions. The cost of service method fails to allocate $1.5 million among Manufacturers' customers.

In its application for rehearing Manufacturers does not address itself to the difference in language in the refund and rate reduction sections of the agreement but rather seeks to support its flow-through calculations on the following principal arguments:

1. It has used the same method of calculating refund flow-through in six prior refund reports in this docket.
2. Those prior refunds have been accepted by the customers and the Commission and therefore the method of calculation has been established.
3. Circumstances surrounding the instant refund required the consistent application of the cost of service method for computing refunds.
4. Cost changes have taken place in the refund period which are not reflected in the stipulated cost of service or the rates agreed to in the settlement and therefore the customers are not equitably entitled to share in any of the refund dollars applicable to such changed costs.

We are of the view that Manufacturers' arguments are entirely without merit.

Manufacturers' claim that its method has become established by prior acceptance by the customers and the Commission and in the interests of consistency that method is now required, are not persuasive for a number of reasons.

Manufacturers in its six prior reports to the jurisdictional customers and the Commission did not allege or disclose that it was retaining a portion of the refunds received from any of its suppliers. It does not now state in its application for rehearing that use of the cost of service method in the prior reports resulted in its retention of any part of the refunds received from suppliers. Thus, the issues here involved have not heretofore been presented either to the customers or the Commission. Clearly, our determination that the method of calculation proposed to be used by Manufacturers is improper under the terms of the settlement, requires that such method be rejected regardless of its prior use. Since Manufacturers seems to be implying that it retained some amounts under the prior reports we are directing our staff to reanalyze those reports together with any reconciliations studies they may require from the company to determine whether acceptance of those prior reports was in error.

Manufacturers' contention that cost changes occurring after the test period should be netted against refunds received from suppliers is no more than a claim that it is entitled to an automatic rate increase at any time that it has an amount of refund dollars to be flowed through to its customers. Absent a specific and unequivocal provision to that effect in the settlement agreement, it is clearly improper to permit Manufacturers to use a calculation which provides it with automatic rate increases. If Manufacturers' costs have increased, the Natural Gas Act provides the steps to be taken to change existing rates and charges.

Manufacturers' application includes a request for oral argument which it bases upon the assertion that this matter involves important administrative policies, principle and procedures. We disagree with this assertion, since, as we have stated above, the main question here is one of interpretation of the settlement agreement. We, therefore, find oral argument unnecessary and not in the public interest.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Manufacturers' application present no new facts or principles of law which were not considered by the Commission in its letter-order issued on January 5, 1966, or which having now been considered, warrant any change or modification of that letter-order.

The Commission orders:

(A) The application for rehearing and reconsideration filed herein by Manufacturers on February 5, 1966, is hereby denied.

(B) Manufacturers' request for oral argument accompanying its application for rehearing is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LUCY G. MOSES, CS66-6; HENRY AND LUCY MOSES FOUNDATION TRUST, CS66-7; BANKERS TRUST COMPANY AS TRUSTEE OF WILLIAM L. HERNSTADT 1950 TRUSTS, CS66-8; ESTATE OF WILLIAM L. HERNSTADT, DECEASED, CS66-9

ORDER DENYING INTERVENTION

(Issued March 4, 1966) *

On January 13, 1966, the Commission issued its "Notice of Application For Small Producer Certificates" notifying interested parties that certain producers had filed for small producer status. Hunt Oil Company (Hunt) now petitions for leave to intervene to protest the four small producer certificate applications listed in the caption. These four producers sell gas to the Wilshire plant, co-owned by Hunt and El Paso Natural Gas Company (El Paso). Hunt states the four producer applicants as small producers will be permitted to sell casinghead gas at 14.5 cents per Mcf without quality deductions, while Hunt and El Paso, after incurring the cost of remedying quality deficiencies can collect only 14.5 cents—the area rate. Hunt makes no contention that the four producer applicants do not qualify as small producers. Hunt has no standing to intervene in this proceeding unless it wishes to show that for some reason one or more of the applicants would not qualify for small producer status. If the circumstances were as stated by Hunt, Hunt's remedy would not be to oppose the granting of small producer certificates, but to apply for relief on the grounds of special circumstances as provided in the *Permian Basin Area Rate Proceeding*, Opinion No. 468, 34 FPC 159 at p. 225, *et seq.*

Examination of the contracts in question makes clear that the facts differ from those stated in Hunt's motion. The four producer applicants involved sell casinghead gas to the Wilshire plant under so-called Spraberry contracts—that is, while the contracts provide for the sale of casinghead gas to be processed at the Wilshire plant, payment for this gas is computed on the basis of a flat price for the residue gas (measured at the tailgate of the plant) plus a percentage of the liquids extracted at the plant. Each contract states that the buyers' liquid percentage covers all cost of processing.

In the case of sales under Spraberry contracts, quality is measured at the tailgate, with no price reduction for prior compression (the only quality deficiency claimed by Hunt). If the processing costs are not covered by liquids retained by the purchaser, the purchaser's remedy is to apply to the Commission for a reduction in the price of the gas purchased. This will be granted upon a showing that the amount paid for the residue gas, plus the excess of processing costs over revenues derived from liquids by the purchaser, exceeds the applicable area rate for the volume of residue gas derived. Opinion No. 468, p. 209. Such relief will be granted whether the seller is a small producer or not. Accordingly, it does not appear that Hunt will suffer damage from the grant of small producer status to these applicants.

For the foregoing reasons, the petition for leave to intervene is denied.

The Commission orders:

The petition of Hunt Oil Company for leave to intervene and protest the small producer applications listed in the caption of this order is hereby denied.

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* Rehearing denied by order issued April 26, 1966, 35 FPC 636.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-158

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING SERVICE AGREEMENT FOR FILING

(Issued March 4, 1966)

On November 19, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-158 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery of additional natural gas to two of its existing utility customers and the revision and initiation of firm natural gas service for three existing industrial customers, all as set forth in the application .

L. V. Crum, Jr., an existing distributor, has requested an increase in contract demand from 100 Mcf of gas to 225 Mcf of gas per day in order to serve new consumers who have or will soon be added due to the expansion of the Racine, Minnesota, distribution system.

The Peoples Division (Peoples) of Applicant has requested additional contract demand service in the amount of 700 Mcf of gas per day, of which 550 Mcf will be sold to W. S. Dickey Clay Manufacturing Company (Dickey) for use in its processing plant near Lehigh, Iowa. Under an order issued in Docket No. CP64-17 on October 29, 1963, 30 FPC 1129, firm service to Dickey is limited to 300 Mcf of gas per day. Annual firm and interruptible sales of natural gas to Dickey are estimated to be 512,250 Mcf. Peoples proposes to use the remaining 150 Mcf of gas per day to initiate firm service to Farm Best, Inc. for use in its meat packing plant located in Denison, Iowa. Total annual sales of natural gas to Farm Best, Inc. are estimated to be 172,250 Mcf.

Peoples further proposes to initiate firm service in the amount of 150 Mcf of gas per day to Glenwood Packing Company (Glenwood) for use in its meat packing plant located in Glenwood, Iowa. Peoples will supply the firm gas from existing contract demand by utilizing peak shaving facilities. Total annual sales of natural gas to Glenwood are estimated to be 82,925 Mcf.

No new facilities are required to effectuate Applicant's proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed sale and delivery of natural gas by Applicant to Crum and Peoples, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that Applicant's superseding service agreement with Crum dated October 25, 1965 and filed November 26, 1965, be accepted for filing effective on the date of issuance of this order, and that with respect thereto the notice requirements of Section 154.22 of the Commission's Regulations be waived.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas hereinbefore described, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The service authorized shall be commenced as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) The service agreement between Applicant and Crum dated October 25, 1965 and filed November 26, 1965, is accepted for filing effective on the date of issuance of this order.

(E) The notice requirements of Section 154.22 of the Commission's Regulations with respect to the service agreement filing are waived.

(F) The certificate issued shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NO. CI62-825

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 4, 1966)

On January 23, 1962, Socony Mobil Oil Company, Inc. (Socony) filed its application for a certificate of public convenience and necessity covering a sale of natural gas in the Rojo-Caballo field in Pecos County, Texas. The contract for this sale is now on file in Socony's FPC Gas Rate Schedule No. 312. On May 25, 1962, temporary authorization was granted and initial deliveries commenced December 21, 1962. On January 11, 1966, Socony tendered for filing, as a supplement to its Gas Rate Schedule No. 312, an amendment to the original gas purchase contract, purporting to amend that contract to reflect an execution date of March 3, 1961. The tendered amendment was executed by Socony and its purchaser on December 22, 1965.

At the same time Socony tendered the proposed contract amendment for filing, Socony also tendered for filing an amendment to its pending application in this docket for a certificate of public convenience and necessity. Socony sought to amend all recitals in its original certificate application which would be affected by the proposed contract amendment.

The purpose of the tendered amendments to the contract and the application was to re-date the contract from December 28, 1960 to March 3, 1961 and thereby obtain the new gas-well gas price of 16.5 cents for gas sold under this contract, instead of the 14.5 cents price which would be applicable to any gas sold under contracts dated before January 1, 1961.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed February 25, 1966 by Socony Mobil Oil Company, Inc. present no facts or legal principles which would warrant any change or modification in the Commission's letter-order of February 11, 1966 in this proceeding, 35 FPC 221.

The Commission orders:

The application for rehearing filed by Socony Mobil Oil Company, Inc., on February 25, 1966, is hereby denied.

Commissioner Bagge *dissenting* for the reasons stated in his separate statement accompanying the order issued March 4, 1966 in El Paso Natural Gas Company, *et al.*, in Docket No. CP64–211, *et al.*, *supra*, p. 321.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, CP63–204; GULF PACIFIC PIPELINE COMPANY, CP63–223; EL PASO NATURAL GAS COMPANY, CP64–76; TRANSWESTERN PIPELINE COMPANY, CP64–91

ORDER DENYING INTERVENTION AND PERMITTING PARTICIPATION AS AMICUS CURIAE

(Issued March 4, 1966)

On February 11, 1966, the United States Department of Health, Education, and Welfare filed a motion for leave to intervene out of time and a petition for intervention in the above-entitled proceedings along with a proposed brief in answer to exceptions filed by other parties. Answers to the filings of the Department were filed by Western Oil and Gas Association, by Fuels Research Council, Inc., National Coal Association and United Mine Workers of America, by Standard Oil Company of California, and by the staff of this Commission. The staff filed a brief in reply to the brief of the Department.

The Department states that its interests and the public would be served by intervention to assure that its views are fully and accurately presented to the Commission. It is not requested that the record be re-opened, and the participation sought is limited to the filing of replies to the exceptions to the examiner's decision, participation in oral argument and in such further proceedings as may be had before the Commission. Alternatively the Department requests that it be allowed to participate as *amicus curiae.*

Section 1.8(d) of the Commission's Rules provides that petitions to intervene must be filed no later than the date fixed for the filings of petitions to intervene in an order or notice unless in extraordinary circumstances for good cause shown. On October 21, 1963, the Commission issued an order consolidating these proceedings for hearing with a provision that petitions to intervene be filed by November 5, 1963. The hearings were held and the record was closed March 17, 1965. The parties have filed their briefs before the examiner, who issued his decision on December 16, 1965. By February 9, 1966, exceptions to the examiner's decision and answers thereto were filed by various parties. The Department does not suggest that it has not been on notice of these proceedings from their inception. It has been clear from an early state that the air pollution issue upon which it now wishes to state its position, and on which a high Department official has submitted testimony at the behest of the staff, would be an important area of controversy.

In view of these facts we do not believe it would be in the public interest to permit the Department to intervene in this long drawn out proceeding at this late date. We think, however, that participation as *amicus curiae* would serve the purposes of the Department in carrying out its responsibilities and would contribute to our consideration of the issues in this case. Therefore, while we shall deny the Department's request for intervention we shall permit it to file its brief and to participate in oral argument if it desires to do so. It is appropriate also that other parties have the opportunity to answer the contentions of HEW in its brief.

The Commission orders:

(A) The motion and petition of the Department for leave to intervene filed February 11, 1966, are denied, but the Department is granted permission to file its brief and to participate in the oral argument in these proceedings, if it chooses to do so, as *amicus curiae.*

(B) Other parties, if they choose to do so, shall file briefs answering the brief of the Department on or before March 15, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168, G-20435 AND G-20577

ORDER ON REHEARING REAFFIRMING ORDER AND REQUIRING PAYMENT OF INTEREST

(Issued March 4, 1966)

By our order issued January 3, 1966, 35 FPC 14, we granted a partial rehearing in this case to permit The Superior Oil Company (Superior) and the Commission's Staff to file Briefs respecting the issue whether Trunkline

Gas Company (Trunkline) should be required to pay interest on the amount of $33,212.67 which we held, by order issued November 10, 1965, 34 FPC 1284, that Trunkline owed to Superior.

The background of this issue follows: On October 25, 1963, Trunkline filed a petition for a declaratory order requesting the Commission to determine that the favored-nation provisions of its contract with Superior did not provide sufficient justification for Superior's rates. Concurrently with the filing, Trunkline tendered Superior amounts lower than the filed rates, computed without giving effect to the favored-nation provisions. On March 9, 1964, 31 FPC 506, the Commission denied Trunkline's petition and required payment of the filed rates, the differences being $981,612.82. Trunkline paid this deficiency to Superior on March 30, 1964. The question of interest was not considered in the March order, but was the principal issue in three subsequent orders. The first was issued April 15, 1964, 31 FPC 934, in which the Commission required the payment of interest (in the amount of $17,330.80) on the principal amounts not tendered by Trunkline. Superior than raised the question whether interest in the amount of $33,212.67, computed on the amounts tendered by Trunkline, was owing. In an order issued June 9, 1964, 31 FPC 1511, the Commission held that Trunkline need not pay said interest because Trunkline's tenders were considered to have been lawful.

Superior then filed a petition for court review of this Commission action. Thereafter the Commission requested and was granted a remand to permit it to reevaluate its decision on this issue in the light of the filed rate doctrine. Following the submission of briefs on this issue, the Commission held that the tenders by Trunkline were unlawful when proper consideration was given to the filed rate doctrine. It therefore determined that Trunkline should pay the $33,212.67 interest on said "tendered" amounts, plus interest on said sum until payment is made. This determination was made in our order of November 10, 1965. In its application for rehearing of that order, Trunkline generally reargued its position that it should not be obliged to pay said interest of $33,212.67; and further argued that, in any event, it should not be obliged to pay interest on said sum from March 30, 1964. This application for rehearing was denied by our order of January 3, 1966, except for the new issue, *i.e.*, whether Trunkline should pay interest on said sum of $33,212.67. On this issue, rehearing was granted for the purpose of giving further consideration, and Staff and Superior were permitted to file supplemental briefs on that issue.

To summarize briefly, the remaining issue is whether Trunkline should pay interest on said $33,212.67 from March 30, 1964, the date Trunkline paid the deficiency in principal, to the time payment thereof is made. Trunkline argues that such a requirement would be unfair since we had never, prior to our November 10, 1965, order, required Trunkline to pay the $33,212.67, but on the contrary, by order issued June 9, 1964, had completely absolved Trunkline of any responsibility to make such payment. Superior denies that any question of compound interest is involved. It argues that Trunkline's earlier partial payments of the amounts owing Superior are first applied to the payment of interest under normal debtor-creditor accounting, so that the unpaid balance of $33,212.67 constitutes a balance of principal improperly withheld by Trunkline.

Staff contends that in appropriate cases the Commission and the courts have required the payment of interest on interest, and further contends that imposing such a requirement is justified in this case to prevent the unjust enrichment of Trunkline, which has, contrary to Superior's right, had the use of the uncontested $33,212.67 since March 30, 1964.

We affirm our determination of November 10, 1965, that Trunkline should pay interest on the $33,212.67 which it has owed Superior since March 30, 1964. Irrespective whether the $33,212.67 be considered as principal or interest, the fact remains that Trunkline has enjoyed the use of this sum since March 30, 1964, and Superior has been deprived of its use, notwithstanding its efforts to recover it. To permit Trunkline the use of this money for the interval to date without any interest obligation would be unfair to Superior and would unjustly enrich Trunkline. Trunkline incorrectly contends that the Commission's uniform practice is not to require the payment of compound interest. While the Commission's usual practice in Section 4(e) rate cases is to require only simple interest on refunds, this is not the Commission's practice when there is some delay in the payment of interest. For example, in the *Permian* case[1] the Commission has required natural gas companies to place refundable amounts, including interest, in escrow accounts which will earn interest thereon, or has allowed them the use of such sums providing, however, for the payment of interest. This course of action consistently has been taken by the Commission pending determination of the flow-through obligations of pipelines with respect to refunds from suppliers. See also *L.&N.R.R.* v. *SlOss-Sheffield Co.*, 269 U.S. 217; *North Drive-In Theatre Corp.* v. *Park-In Theatres*, 248 F. 2d 233.

While Trunkline's position is entitled to substantial weight by virtue of our prior order of June 9, 1964, we nevertheless believe that the factors and precedents discussed herein require a judgment in favor of Superior.

The Commission orders:

(A) Trunkline shall, within 60 days of the date of issuance of this order, pay Superior the amount of $33,212.67 plus interest thereon at the rate of 7 percent per annum from March 30, 1964 until the date the payment is made. Trunkline shall, simultaneously with the making of such payment, transmit to the Commission a statement showing the amount so paid and the computations underlying such payment.

(B) Paragraphs (B) and (C) of our order issued herein on November 10, 1965 are hereby reaffirmed.

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[1] AR61-1, Opinion No. 468, issued August 5, 1965, 34 FPC 159.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

W. C. MCBRIDE, INC., ET AL., DOCKET NOS. G-16890, RI61-90, RI63-215, RI63-309 AND RI64-163

ORDER CONDITIONALLY ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, REQUIRING REFUNDS AND SEVERING AND TERMINATING PROCEEDINGS

(Issued March 4, 1966)

On November 26, 1965, W. C. McBride, Inc., *et al.* (McBride) filed five offers of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving five sales of natural gas to natural gas pipeline companies in fields located in the States of Colorado, Oklahoma and Texas (Texas Railroad Commission District Nos. 2 and 6).[1] The settlement involves proposed rate increases which when filed by McBride, were suspended by order of the Commission, and after the statutory suspension period were made effective, subject to refund, by McBride by appropriate motion.

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[1] The natural gas pipeline purchasers and the rates involved herein are set forth in the appendix hereto.

Under the terms of the settlement offers, McBride proposes settlement rates equal to the applicable increased area rate ceiling, or the last firm rate, and to a three year filing moratorium, commencing November 1, 1965, upon any proposed increased rates for the sales involved. However, McBride reserves the right to file up to the applicable area ceiling, if such ceiling be increased, at any time during the moratorium period if contractually authorized. It also proposes to refund all monies collected subject to refund under three of the sales (FPC Gas Rate Schedule Nos. 6, 8 and 9) and refunds in accordance with the *Grigsby* formula[2] under the other two sales (FPC Gas Rate Schedule Nos. 1 and 7). The amount of refunds to be made is approximately $17,400, exclusive of applicable interest, and McBride's annual revenues will be reduced approximately $6,500 below that now charged and collected at the currently effective rates.

In the *Grisgby* order (*supra*) we provided that as a condition to utilizing *Grigsby* the small producers agree to a 36 month moratorium on proposed rate increases above the applicable ceiling for each of their filed rate schedules as is generally agreed to by large producers in their company-wide settlements. As noted above, McBride proposes to make the moratorium applicable only to the sales involved herein. Therefore, we shall condition our approval of its proposal to require the moratorium period to apply to all of McBride's FPC Gas Rate Schedules now on file with the Commission.

Additionally, one of McBride's jurisdictional pipeline customers, Texas Eastern Transmission Corporation (TETCO) does not now acknowledge a flowthrough obligation on its part of the refund monies it would receive from McBride. Consequently, for all of the reasons set forth in our order in *Humble Oil & Refining Company*, Docket Nos. G-9287 and G-9288, *et al.*, 32 FPC 49, we shall require McBride to retain the refund monies it would otherwise pay over to TETCO pending further order of the Commission regarding their disposition.

We believe that McBride's settlement proposals, as conditioned, are in the public interest and shall approve the same. However, we desire to make it clear that acceptance of McBride's offers of settlement, as amended, shall not be construed as approval of any future increased rate that may be filed by McBride under the subject rate schedules and is without prejudice to any findings or order of the Commission in any future proceeding involving McBride's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement, as conditioned, filed with the Commission by McBride on November 26, 1965, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offers of settlement, as conditioned, filed with the Commission by McBride on November 26, 1965, is approved in accordance with the provisions of this order.

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[2] *Jack W. Grigsby (Operator), et al.*, Docket Nos. RI61-96 and RI62-536, 32 FPC 529.

(B) McBride shall file, within 45 days from the date of issuance of this order, notices of changes in rates under its FPC Gas Rate Schedules to reflect the settlement rates in accordance with the terms of its settlement proposals, as amended, and as conditioned herein. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) McBride shall compute the difference between the rates collected subject to refund and the settlement rate for the sales for which it proposes to make refunds under its FPC Gas Rate Schedule Nos. 6, 8 and 9, and under its Rate Schedule Nos. 1 and 7 in accordance with the percentages set forth in the appendix hereto, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipeline purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

(D) McBride shall refund to its jurisdictional pipeline purchasers the refund monies due and owing each in accordance with Paragraph (C) above ten days after receiving the letter from each required by Paragraph (C) above, with applicable interest, except it shall retain the amounts shown in the report required under paragraph (C) above due to be paid to TETCO, subject to further order of the Commission directing the disposition of those amounts.

(E) McBride may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon TETCO. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between McBride and any bank or trust company used as a depository of funds of the United States Government and the agreement shall be conditioned as follows:

(1) McBride, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its rea-

sonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be paid out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If McBride elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention so to do within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that McBride has complied with the terms and conditions of this order, the proceedings in the Appendix hereto shall terminate, the proceedings in Docket Nos. G–16890 and RI63–309 shall be severed from the proceedings in Docket No. AR64–2, *et al.*, and the proceedings in said dockets shall terminate, all without further order of the Commission.

(H) McBride shall file, over the signature of a responsible officer of the corporation, within 30 days from the issuance of this order, an original and one copy in writing of its acceptance or rejection of the terms and conditions of this order.

(I) The acceptance by the Commission of McBride's offers of settlement, conditioned to provide that the moratorium period shall apply to all McBride's FPC Gas Rate Schedules now on file with the Commission, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against McBride and is without prejudice to claims or contentions which may be made by McBride, the Commission staff, or any affected party hereto, in any proceedings.

Commissioner O'Connor *not participating.*

APPENDIX

W. C. MCBRIDE, INC., DOCKET NO. G–16890, ET AL.

Rate Schedule & Supp. No.	Buyer	Area	Docket No.	Effective Date	Pressure Base	Rates		
						Approved	Suspended	Settlement
1-5	Trunkline Gas Company.	Texas Railroad District No. 2.	G–16890*	5- 1-59	14.65	9.0864	15.00	14.0
6-9	Texas Eastern Trans. Corp.	Texas Railroad District No. 2.	RI63–309	7- 5-63	14.65	13.8733	14.3733	14.1
7-2	Kansas Nebraska Nat. Gas Co., Inc.	Colorado	RI61–90**	4- 1-61	15.025	13.8262	13.7424	13.0
8-9	Texas Eastern Trans. Corp.	Texas Railroad District No. 6.	RI64–163	4- 1-64	14.65	14.6	15.6	14.6
9-3	Cities Service Gas Co.	Oklahoma Other	RI63–215	5-23-63	14.65	11.0	12.0	11.0

*Partial refunds: 1—Docket No. G–16890:
5-1-59 to 12-31-60: 25% refunds with 6% interest.
1-1-61 to 12-31-62: 70% refunds with 6% interest.
1-1-63 to date of order: 100% refunds with 6% interest.

**Partial refunds: 7—Docket No. RI61-90:
4-1-61 to 12-31-62: 70% refunds with 7% interest.
1-1-63 to date of order: 100% refunds with 7% interest.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E-7263

ORDER DISMISSING APPLICATION FOR AUTHORITY TO ACQUIRE, MERGE OR CONSOLIDATE FACILITIES

(Issued March 7, 1966)

Arkansas Power & Light Company (Arkansas) is a wholly owned subsidiary of Middle South Utilities Inc. (Middle South), a registered holding company under the Public Utility Holding Company Act of 1935. Arkansas is also a corporation organized under the laws of the State of Arkansas with its principal business office at Little Rock, Arkansas and engaged in the generation, transmission and distribution of electric energy in the State of Arkansas.

On December 22, 1965, Arkansas and Middle South filed a joint application with the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act seeking authority for Middle South to acquire all of the outstanding common stock of Crossett Electric Company (Crossett), an electric utility company organized under the laws of Arkansas and doing business in Crossett, Arkansas, and authority for Arkansas to lease all of the electric distribution facilities of Crossett from Middle South. Crossett has never been classified as a public utility by this agency nor does the Commission have any information indicating that it is a public utility within the meaning of Section 201 of the Federal Power Act. On December 22, 1965, Arkansas also filed an application with the Federal Power Commission seeking authority pursuant to Section 203 of the Federal Power Act to lease the above-mentioned facilities.

On February 10, 1966, *In the Matter of Middle South Utilities, Inc., Arkansas Power & Light Company, New York, New York, Crossett Electric Co., Crossett, Arkansas, File No. 70-4339*, the Securities and Exchange Commission issued an order pursuant to the provisions of the Public Utility Holding Company Act of 1935 authorizing Middle South to acquire Crossett Electric Company and the leasing of the electric facilities of Crossett by Middle South to Arkansas. Since Middle South is not a public utility its purchase of Crossett's common stock is not subject to the Commission's jurisdiction. Arkansas being a wholly-owned subsidiary of Middle South its action in leasing the facilities of Crossett, which will on receipt of approval by the SEC be another wholly-owned subsidiary of the Middle South system, is also a transaction subject to the requirements of the Holding Company Act, and, hence pursuant to the provisions of Section 318 of the Federal Power Act, Arkansas need not secure approval from this Commission therefore. Finally Crossett not being a public utility pursuant to the provisions of the Federal Power Act does not need authority from this Commission for its actions.

Upon consideration of the application herein and the above-described order issued by the Securities and Exchange Commission, the Commission *finds*:

The application filed herein pursuant to Section 203 of the Federal Power Act is not within the purview of that Section by reason of Section 318 thereof.

The Commission orders:

The application herein to lease aforementioned electric distribution facilities from Crossett is hereby dismissed for lack of jurisdiction.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WIND GAP DIVISION OF BANGOR GAS COMPANY AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-95

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 7, 1966)

On October 6, 1965, the Wind Gap Division of Bangor Gas Company (Applicant) filed in Docket No. CP66-95 an application, as supplemented and amended on November 23, 1965, and as further supplemented on December 9, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Transcontinental Gas Pipe Line Corporation (Respondent) to make a physical connection of its natural gas transmission facilities with the facilities to be constructed by Applicant and to sell and deliver up to 583 Mcf of natural gas per day to Applicant for resale, as more fully set forth in the application.

Applicant will construct and operate 4,200 feet of 4-inch gas pipeline, along with the necessary regulating and metering appurtenances, extending from a tap on Respondent's Leidy Line at a point where the latter crosses State Route 512 in Northampton County, Pennsylvania. Applicant will also construct and operate a distribution system in the Borough of Wind Gap, Pennsylvania for the sale of natural gas to residential and commercial customers therein.

Applicant's proposed facilities will include an eastward extension which will connect with the existing facilities of Bangor Gas Company (Bangor). Bangor, a subsidiary of Penn Fuel Gas, Inc., purchases natural gas from The Manufacturers Light and Heat Company.

The estimated natural gas requirements for Applicant during the first three years of proposed operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	118,805	131,715	165,055
Peak day (Mcf)	253.9	358.5	582.5

Applicant has received letters of intention from three industrial customers, Argyl Manufacturing Company, Blue Ridge-Winkler Textiles and Anthony Dally & Sons, Inc., indicating a willingness to purchase volumes of natural gas.

The estimated cost of the facilities to be constructed by Applicant is $129,535, which will be financed from advances to be made by Penn Fuel Gas, Inc.

On October 21, 1965, the Pennsylvania Public Utility Commission affirmed its certificate of public convenience issued June 5, 1961, which authorized Applicant's incorporation and merger into Bangor Gas Company.

On June 7, 1965, the Wind Gap Borough Council extended for two years the authorization for Penn Fuel Gas, Inc., to enter upon the streets of the Borough with natural gas pipelines.

On October 28, 1965, Respondent filed an answer to the application and indicated that it has no objection to the proposal.

Due notice of the filing of the application was published in the Federal Register on October 21, 1965 (30 F.R. 13414). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Transcontinental Gas Pipe Line Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued April 28, 1950, in Docket No. G–1277 (9 FPC 32).

(2) Applicant is a public utility company in the Commonwealth of Pennsylvania and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 583 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection to its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 583 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–188

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 7, 1966)

On December 8, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP66–188 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas compressor facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other natural gas facilities, as more fully set forth in the application.

Applicant will construct and operate the following described facilities:

(1) 2,000 additional compressor horsepower at Applicant's Hugoton Compressor Station in Grant County, Kansas,

(2) 34 miles of 26-inch pipeline partially looping its Blackwell to Grabham 26-inch main pipeline in Kay and Osage Counties, Oklahoma, and

(3) five miles of 12-inch pipeline partially looping its Fort Scott 8-inch pipeline in Allen County, Kansas.

The following compressor facilities will be abandoned by reclamation:

(1) The Cambridge Compressor Station in Cowley County, Kansas, consisting of 2,925 horsepower of compressor units and appurtenant facilities and

(2) two 170 horsepower units located at its Lyons Compressor Station in Rice County, Kansas.

The increased horsepower at the Hugoton Station is required to reduce the peak day overload of the station from about 110 percent to 102 percent and to reduce the overload on the units during the 60 to 70 days required for annual maintenance and repairs. The operating flexibility of the station will be improved by reducing the impact of an emergency outage of any particular unit.

The increased capacity to be provided by the 34 miles of 26-inch pipeline looping in Oklahoma will be utilized to transport net additional volumes of approximately 50,000 Mcf per day, which will become available at Blackwell prior to the 1966–67 winter heating season.

Applicant proposes to handle increased customer requirements with no increase in pipeline pressure on the Fort Scott 8-inch pipeline by constructing five miles of 12-inch looping. The existing Fort Scott pipeline was constructed in 1929 and a portion was lap welded. Therefore, Applicant considers the upper working pressure level to be 500 psig.

The Cambridge Compressor Station has not been used since 1958, after the Blackwell to Grabham and the Grabham to Welda pipelines were completed, and no further use of these obsolete compressor units is indicated.

The Lyons Compressor Station was used to compress gas from the Kansas City-Hugoton main pipeline north into the Lyons-Superior system until the Alden Storage Field was developed after its certification in 1961 in Docket No. CP60–32. The Lyons Compressor Station is used during the summer, but since the summer day sales demand is low, the full installed horsepower is not required. Applicant will therefore reclaim two obsolete 170 horsepower units.

The total estimated cost of the facilities to be constructed is $4,275,000, which will be financed from treasury cash.

Due notice of the filing of the application was published in the Federal Register on December 28, 1965 (30 F.R. 16176). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment hereinbefore described, as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(4) The facilities hereinbefore described and as more fully described in the

application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding are granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

(C) A certificate of public convenience and necessity is issued to Applicant, Cities Service Gas Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(D) The certificate issued by paragraph (C) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(E) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP66-231

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 7, 1966)

On January 19, 1966, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP66-231 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of natural gas facilities for the sale of natural gas to direct consumers and existing distributors for resale and for miscellaneous rearrangements, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 8 lateral or loop lines of up to 6-inch diameter pipe with the maximum length being 25 miles and a maximum of 11 taps and meters in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and in order to deliver natural gas to direct consumers located in areas outside the franchise area of any local distributor. Applicant also proposes to construct a maximum of 2 lateral or loop lines of up to 6-inch diameter pipe with the maximum length being 5 miles and a maximum of 2 taps and meters in order to accomplish miscellaneous rearrangements.

The deliveries to any one distributor or consumer by means of the proposed facilities will not exceed 100,000 Mcf per year and none of the gas delivered will be used by any distributor or consumer for boiler fuel purposes as defined by the Commission in Section 157.7(c) of its Regulations under the Act.

The total estimated cost of the proposed facilities will not exceed a maximum of $300,000, which cost will be financed with internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one distributor or consumer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7 (c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct consumers and to distributors for resale and for miscellaneous rearrangements as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one distributor or consumer limited to a maximum of $100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations, and, further, shall not entitle any industrial customer to whom firm deliveries may be authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) The certificate issued is granted on the express condition that any interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP66-232

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 7, 1966)

On January 19, 1966, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP66-232 an application pursuant to Section 7(c) of the Natural

Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,370,000, with no single project to exceed a cost of $342,500, which costs are proposed to be financed from internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinbefore granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,370,000, with no single project to exceed a cost of $342,500.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,370,000, with no single project to exceed a cost of $342,500.

(E) The authority granted herein shall not be construed as authorization to attach new customers or to increase the volume of sales to existing jurisdictional customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-217

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 7, 1966)

On January 3, 1966, Transcontinental Gas Pipe Line Corporation (Applicant), filed in Docket No. CP66-217 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the rendition of additional service to an existing customer, all as more fully set forth in the application.

Applicant seeks authority to sell and deliver an additional volume of 500 Mcf of natural gas per day to the Town of Blacksburg, South Carolina (Blacksburg), an existing customer under Applicant's Rate Schedule G-2, and for the construction, installation and operation of a sales meter station and appurtenant equipment to be located at mile post 1241.37 on Applicant's 36-inch main transmission line "C" near Blacksburg in Cherokee County, South Carolina, to be utilized as an additional point of delivery to Blacksburg. Blacksburg has requested the new delivery point and the delivery at that point of the additional volumes proposed in order that natural gas service can be provided to the new plant of Broad River Brick Company and for additional residential service in the area.

The total estimated cost of the proposed facilities is $20,300, which cost will be defrayed by Applicant from its general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G-704 (7 FPC 24).

(2) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant to the Town of Blacksburg as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the Acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of facilities and the sale and delivery of natural gas to the Town of Blacksburg, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant and the Town of Blacksburg shall execute a superseding service agreement in accordance with the Commission's Regulations reflecting the new delivery point and increased volumes and the same shall be filed with the Commission by Applicant pursuant to Section 154.22 of the Commission's Regulations.

(D) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION GAS SYSTEM, INC. AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–176

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 7, 1966)

On December 2, 1965, Union Gas System, Inc. (Applicant) filed in Docket No. CP66–176 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Cities Service Gas Company (Respondent) to make a physical connection of its transmission facilities with Applicant's proposed lateral pipeline and to sell and deliver up to 528 Mcf of natural gas per day to Applicant for resale and distribution in the City of Easton and the community of Lowemont, Leavenworth County, Kansas, as more fully set forth in the application.

Applicant requests that Respondent be directed to make a physical connection between Respondent's 16-inch transmission pipeline and Applicant's proposed 3-inch I.D. lateral pipeline, which will extend from the interconnection for a distance of 7.5 miles to the City of Easton; Kansas. Applicant will construct 2.36 miles of 1¼-inch lateral pipeline from a point on the 3-inch lateral to the community of Lowemont, Kansas. Applicant will also construct and operate distribution systems in Lowemont and Easton.

Easton has a population of approximately 500 with 140 residences, and Lowemont has a population of 35 with 10 residences. Forty-eight additional residences are located along the proposed lateral pipeline.

Applicant estimates that the annual and peak day requirements for natural gas for these customers during the first three years of proposed operations will be as follows:

	First year	Second year	Third year
Peak day (Mcf)	375	454	528
Annual (Mcf)	29,813	35,683	41,171

Service will be rendered to Applicant under Respondent's Rate Schedule F–2.

The estimated cost of constructing the proposed lateral pipelines and distribution systems is $83,486, which will be financed from treasury cash.

The Kansas State Corporation Commission has certified the proposed service area to Applicant in its order issued in Docket No. 76,160–U on October 20, 1965.

Respondent, by its letter filed December 17, 1965, states that it has no objection to the granting of the application provided that the delivery pressure will not be required to exceed 125 psig.

Due notice of the filing of the application was published in the Federal Register on December 16, 1965 (30 F.R. 15506). A notice of intervention was filed by the Kansas State Corporation Commission on December 20, 1965, and withdrawn on January 17, 1966. No other notices of intervention, protests or petitions to intervene have been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is a public utility company in the State of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 528 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 528 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall not be required to deliver the gas at a pressure in excess of 125 psig.

(D) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(E) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION GAS SYSTEM, INC. AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–193

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 7, 1966)

On December 16, 1965, Union Gas System, Inc. (Applicant), filed in Docket No. CP66–193 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the Smith-North Area, Leavenworth County, Kansas, all as more fully set forth in the application.

Applicant seeks the resale and delivery by Respondent to Applicant of up to 64 Mcf of natural gas per day at an interconnection of Applicant's proposed lateral pipeline with Respondent's 26-inch transmission line in eastern Leavenworth County, Kansas. Specifically, Applicant proposes to construct, own and operate a natural gas distribution system in the community known as the Smith-North Area in Leavenworth County, Kansas. Applicant also proposes to construct, own and operate pipeline facilities consisting of 1.66 miles of 2-inch I.D. pipeline and 0.40 mile of 1¼-inch I.D. pipeline extending south and east from the proposed point of interconnection. The community proposed to be served has an estimated population of approximately 65 with 20 residences and one public school.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	4, 538	5, 206	5, 540
Peak day (Mcf)	51	60	64

The total estimated cost of Applicant's proposed construction, including the described lateral, is estimated to be $14,460, which will be defrayed from funds on hand.

By order issued October 20, 1965, the Kansas State Corporation Commission authorized Applicant to transact the business of a gas public utility in the Smith-North area of Leavenworth County, Kansas.

On January 20, 1966, as supplemented on February 7, 1966, Respondent filed comments stating that it has no objections to rendering the proposed service and is able to do so with existing line capacity.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on December 30, 1965 (30 F.R. 16285). Notice of intervention was filed by the Kansas State Corporation Commission on January 10, 1966 and was withdrawn on January 17, 1966.

No other protest, petition to intervene, or notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Respondent, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 64 Mcf per day of natural gas for distribution and resale as hereinbefore described in the application and supplements in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the Smith-North Area, Leavenworth County, Kansas and environs, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 64 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive natural gas as directed herein within one year from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION GAS SYSTEM, INC. AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66-194

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 7, 1966)

On December 16, 1965, Union Gas System, Inc. (Applicant) filed in Docket No. CP66-194 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 35 Mcf of natural gas per day to Applicant for resale and distribution in the community known as the Conner Area in Leavenworth County, Kansas, as more fully set forth in the application.

Applicant requests that Respondent be required to establish an interconnection of its 26-inch transmission pipeline with the lateral pipeline to be constructed by Applicant to serve the Conner Area. Applicant will construct and operate 1.12 miles of 2-inch I.D. and 0.37 mile of 1-inch I.D. lateral pipeline facilities extending eastward from the proposed interconnection to the service area. Applicant will also construct and operate a distribution system in the Conner Area.

The Conner Area has an estimated population of 56 with 16 residences. The estimated annual and peak day natural gas requirements for the community during the first three years of proposed operations is as follows:

	First year	Second year	Third year
Annual (Mcf)	2,004	2,338	2,672
Peak day (Mcf)	26	31	35

The service will be rendered pursuant to Respondent's Rate Schedule F-2.

The estimated cost of the facilities to be constructed by Applicant is $11,436, which will be financed from treasury cash.

The Kansas State Corporation Commission certified the proposed service area to Applicant in its order issued in Docket No. 76,160-U, dated October 20, 1965.

In its response filed on January 20, 1966, Respondent objected to the construction of separate delivery points pursuant to the instant proposal and the proposal submitted by Applicant in Docket No. CP66-193 for service for resale and distribution in the Smith-North Area, Leavenworth County, Kansas. On February 7, 1966, Respondent filed a second letter withdrawing this objection and stating that it has no objection to the granting of the application.

Due notice of the filing of the application was published in the Federal Register on January 5, 1966 (31 F.R. 108). On January 10, 1966, the Kansas State Corporation Commission filed a notice of intervention which was withdrawn on January 20, 1966. No other notices of intervention, protests, or petitions to intervene have been filed in this proceeding.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicant is a public utility company in the state of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 35 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 35 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HARVEY E. YATES, ET AL., CI65-659; SOUTHERN PETROLEUM EXPLORATION, INC., CI65-692; THE SUPERIOR OIL COMPANY, CI65-995

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, SEVERING PROCEEDINGS, ACCEPTING OFFERS OF SETTLEMENT, AND ACCEPTING FPC GAS RATE SCHEDULES AND SUPPLEMENTS FOR FILING

(Issued March 7, 1966)

Applicants herein have filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Indian Basin Area, Eddy County, New Mexico, to Natural Gas Pipeline Company of America, all as more fully set forth in the applications.

The contract executed by Applicant in Docket No. CI65-995 provides for an initial rate of 16.0 cents per Mcf at 14.65 psia plus upward and downward Btu adjustment from a base of 1,000 Btu's per cubic foot. The contracts executed by Applicants in Docket Nos. CI65-659 and CI65-692 provide for an initial rate of 16.608 cents per Mcf less a downward Btu adjustment from a base of 1,038 Btu's per cubic foot. The estimated Btu content of the gas is 1,038 per cubic foot, and on this basis all of the contracts provide for a rate of 16.608 cents per Mcf. All of the contracts contain quality standards which meet or exceed those standards for pipeline quality gas prescribed in Opinion Nos. 468 and 468-A, 34 FPC 159, 1068.

By order issued August 5, 1965, in Docket No. AR61-1, *et al.*, 34 FPC 424, Applicants were ordered to show cause why they should not receive permanent certificate authorization at the rates prescribed in Opinion No. 468. Said opinion, as modified by Opinion No. 468-A, prescribes an initial rate for gas sold from the New Mexico portion of the Permian Basin of 15.5 cents per Mcf plus applicable state and local taxes in effect on September 1, 1965, a moratorium until January 1, 1968, on rate increases, and upward Btu adjustment from a maximum standard of 1,050 Btu's per cubic foot and downward Btu adjustment from a minimum standard of 1,000 Btu's per cubic foot.

Applicants in Docket Nos. CI65-659 and CI65-692 have submitted settlement proposals and have offered to accept permanent certificates at the rates and with the conditions prescribed in Opinion Nos. 468 and 468-A. Applicant in Docket No. CI65-995 has advised the Commission by letter that it is willing to accept a permanent certificate at the rates and with the conditions prescribed in Opinion Nos. 468 and 468-A. Applicants adopt the rate schedule quality statement filed in Docket No. CI65-603 by Marathon Oil Company, operator of the jointly-owned processing plant, which statement shows that the quality of the gas, based upon plant design specifications, is within the quality standards prescribed in Opinion Nos. 468 and 468-A. Marathon Oil Company and other producers have received permanent certificates pursuant to settlement proposals to sell gas under contracts similar to those involved herein.[1]

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[1] Order issued November 3, 1965, in *The Atlantic Refining Company, et al.*, Docket No. CI65-513, *et al.*

Applicant's proposals have been filed within the spirit of the Commission's opinion determining just and reasonable rates for producers in the Permian Basin on an area basis and afford an appropriate opportunity for the issuance of certificates under conditions which will provide a complete and effective plan of regulation. The rates to which Applicants have agreed and the moratorium by which they have agreed to abide correlate to those required by Opinion Nos. 468 and 468-A. Accordingly, the applications will be severed from the proceeding on the Order to Show Cause in Docket No. AR61-1, *et al.*, and certificates of public convenience and necessity will be issued under the conditions prescribed in the area rate opinion.

After due notice no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales of natural gas hereinbefore described, all as more fully described in the applications, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the offers of settlement submitted by Applicants in Docket Nos. CI65-659 and CI65-692 should be accepted and that the applications in Docket Nos. CI65-659, CI65-692 and CI65-995 should be severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61-1, *et al.*

(5) The sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedules submitted by Applicants should be accepted for filing.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing the sales of natural gas by Applicants in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the Appendix hereto and in the respective applications and offers of settlement in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission thereunder.

(C) The grant of the certificates issued by paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upón termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The offers of settlement submitted by Applicants in Docket Nos. CI65–659 and CI65–692 are accepted and the applications in Docket Nos. CI65–659, CI65–692 and CI65–995 are severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61–1, *et al.*

(E) Applicants shall comply with the requirements of Opinion Nos. 468 and 468–A, and particularly

(a) The initial rate shall be the applicable area rate prescribed in Opinion No. 468, as modified by Opinion No. 468–A, or the contract rate, whichever is lower, and

(b) No increase in rate in excess of that provided in (a) above shall be filed before January 1, 1968.

(F) Within 90 days of initial delivery each Applicant shall file three copies of a rate schedule quality statement in the form provided by Opinion No. 468–A.

(G) Each Applicant shall file three copies of a revised billing statement specifying a rate of 15.5 cents per Mcf at 14.65 psia plus the computed amount of applicable tax. Such statement shall show the method of computation used in computing the applicable tax.

(H) The FPC gas rate schedules submitted by Applicants are accepted for filing to be effective on the date of initial delivery and are designated as follows:

Docket No. and Filing Date	Applicant	Description and Date of Instrument	Rate Schedule	Supplement
CI65-659, 1-8-65	Harvey E. Yates, *et al*	Contract, 9-10-64	1	----------
		Amendment,[1] 8-25-65	1	1
CI65-692, 1-11-65	Southern Petroleum Exploration, Inc.	Contract, 9-10-64	17	----------
		Amendment,[1] 8-25-65	17	1
CI65-995, 4-8-65	The Superior Oil Company	Contract, 9-10-64	115	----------

[1] Amends pricing provisions of contract.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

APPALACHIAN POWER COMPANY, PROJECT NO. 2317

ORDER PERMITTING INTERVENTION, GRANTING IN PART, AND DENYING IN PART, MOTIONS TO DISMISS, AND FIXING HEARING

(Issued March 8, 1966) *

From the junction of the North and South Forks of the New River in North Carolina, the New-Kanawha river flows a distance of 352 river miles to its confluence with the Ohio River, following a route, generally northward, through the States of North Carolina, Virginia and West Virginia. At its confluence with the Gauley River, about 97 miles from its mouth, the New changes its name to the Kanawha.

On February 26, 1965, the Appalachian Power Company filed an application for license seeking authorization to construct (1) a hydroelectric development (including pumped storage) consisting of upper and lower reservoirs in the New River in North Carolina and Virginia and appurtenant power-generating and other facilities; and (2) the installation of power facilities at the United States Bluestone Reservoir project dam. Bluestone Dam is in West Virginia, about 140 river miles downstream from the proposed lower pumped storage reservoir. Bluestone Reservoir impounds water in West Virginia and Virginia.

The North Carolina Electric Membership Corporation and the Old Dominion Electric Cooperative, each representing, respectively, a number of REA cooperatives located in North Carolina and Virginia, filed, on May 18, 1965, petitions to intervene. A member of North Carolina Electric, the Blue Ridge Electric Membership Corporation, and Mecklenburg Electric Cooperative, a member of Old Dominion, filed similar petitions, as did the Harrison Rural Electrification Association, Inc., of West Virginia.

North Carolina Electric Membership Corporation and Old Dominion state they are interested in the application for license because each of them, and their members, are cooperatives and are therefore entitled, under Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), to preference in the sale by the Secretary of the Interior of power generated by the United States at reservoir projects. They also state that they, and some of their members, are within the feasible marketing area of all sites included in the license application. Similar statements are also made by Blue Ridge, Mecklenburg and Harrison. The cooperatives assert a need for low-cost power to serve both their present and future requirements.

In its answer Appalachian contends that the cooperatives' interest derives from those of the Secretary of the Interior and therefore their petitions to intervene should be dismissed because the Secretary has not intervened. In support of this contention the Applicant cites *United States ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153. In the Chapman case the Court held that congressional approval of a general comprehensive plan for river development does not, standing alone, withdraw the projects named in the plan from the licensing jurisdiction of the Commission. The Court recognized, however, that the Secretary of the Interior and an association of REA cooperatives had, under the particular circumstances of the case, an interest sufficient to include standing to obtain court review of a Commission order issuing a license.

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*See order issued May 3, 1966 re rehearing and reconsideration, etc., 35 FPC 669.

The Court did not intimate in the *Chapman* case that the interest of the cooperative was derived in any way from the fact that the Secretary had also asserted an interest. While the interveners had interests which were held to be of such nature as to confer standing to obtain court review, the Court pointed out that the underlying basis of the Secretary's standing differed from that of the cooperative. The Court gave as a reason for not specifying this difference in detail the fact that its members held divergent views such as to "preclude a single opinion of the Court as to both petitioners." 345 U.S. 153, 156. The Federal Power Act provides for congressional authorization of a hydroelectric project as a federal undertaking upon the recommendation of the Federal Power Commission under Section 7(b) of the Federal Power Act. Upon construction of such a project the duty of the Secretary of the Interior to sell the power, under Section 5 of the Flood Control Act of 1944, and the preferred right of a cooperative to purchase it, would arise by operation of law. We do not feel that disposition of a cooperative's petition to intervene in a licensing proceeding depends on whether the Secretary of the Interior has filed a petition to intervene.

With their petitions to intervene the cooperatives filed motions to dismiss, one common ground being that installation of power-generating facilities had been authorized by Congress as part of the Federal Bluestone Reservoir project. The Secretary of the Interior, in his report on the application received November 3, 1965, and the Chief of Engineers, in his report filed on November 10, 1965, expressed the view that Federal installation of power-generating facilities at Bluestone Reservoir project had been specifically authorized, the Chief of Engineers stating that construction of the power facilities was deferred in 1944.

The Bluestone Reservoir project was recommended to the Congress by the Chief of Engineers for federal construction as a multipurpose project for power development, flood control and navigation on February 1, 1935. The recommendation was contained in the comprehensive "308" report on the Kanawha River Basin. H.R. Doc. No. 91, 74th Cong., 1st Sess. (1935). The project dam, including six penstocks, was completed in 1952.

On September 12, 1935 the President, pursuant to authority conferred by Sections 202[1] and 203 of the N.I.R.A. (48 Stat. 195, 201–2), and by the Emergency Relief Appropriation Act of 1935 (49 Stat. 115, 119), issued Executive Order No. 7183A, directing the Secretary of War, through the Chief of Engineers, to construct the Bluestone Reservoir project. The Bluestone reservoir project was expressly ratified by Congress in the Flood Control Act of 1936 (49 Stat. 1570, 1572, 1586), which approved the project and noted that it was "then under way." The Flood Control Act of 1938 (52 Stat. 1215–17) also specifically authorized the project and incorporated Executive Order 7183A by reference. See *United States* v. *West Virginia Power Co.*, 91 F. 2d 611 (CA4–1937), *pet. for cert. dismissed*, 302 U.S. 770 and *U.S.* v. *W. Va. Power Co.*, 122 F. 2d 733 (CA4–1941) (Parker, J.), cert. denied, 314 U.S. 683.

The Flood Control Act of 1938 was an omnibus act. In reporting this legislation the House Committee on Flood Control made clear that the Bluestone Reservoir project was for the dual purpose of flood control and the development of power, pointing out that Bluestone was one of but two reservoirs in the bill at which the development of power was authorized. The Committee also noted that the Flood Control Act of 1936 had also provided for the construction of Bluestone and two other dual-purpose reservoirs at the expense of the United States. H.R. Rep. No. 2353, 75th Cong., 3d Sess., 5-6 (1938).

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[1] Section 202 of the National Industrial Recovery Act (48 Stat. 195, 201 (1933)) directed the inclusion of river improvements in programs of public works where, as concerned here, the project had been "recommended to Congress by the Chief of Engineers under the established practice", that is, that the recommendation was based "on examinations, surveys and reports made in pursuance of the [River and Harbor] Acts and submitted to Congress for its consideration when determining whether the project should be undertaken." *United States* v. *Arizona*, 295 U.S. 174, 191–2.

Applicant, in answer to the Secretary of the Interior and the Chief of Engineers, concludes that installation of power facilities at Bluestone Reservoir is not Congressionally authorized. The argument runs that in the project document (H.R. Doc. 91, *supra*) the Chief of Engineers conditioned his recommendation upon the execution of an agreement for the sale of power and that this condition constituted a condition precedent which was never carried out. The answer to this contention[2] is that it was specifically held in *United States* v. *West Virginia Power Co., supra* (122 F. 2d 733, 736-737), that Congress, in authorizing construction of the project in 1936 and 1938, did not adopt the condition.

The Applicant's second argument is that Executive Order 7183A and the authorizing statutes conferred discretionary authority on the Chief of Engineers to change or modify the project plans and specifications. This delegation, properly construed, includes authority, according to the Applicant, to eliminate one of the two major purposes of the project as Congressionally authorized. The Chief of Engineers, the Applicant contends, exercised this authority and, having reported to Congress elimination of installation of power facilities at Bluestone, the Congressional authorization is now "exhausted."

We need not examine the extent of the discretion conferred by the Congress on the Chief of Engineers because the legislative history indicates a mere deferral of installation of power-generating facilities. In support of the contention that installation of power facilities was not deferred, the Applicant draws attention to the fact that in 1945 the Engineer Corps, seeking an allocation of lump sum appropriations to various projects in the Ohio River Basin, did not list Bluestone in tabulations submitted to show flood control reservoirs which included power-generating facilities. In this connection the Applicant cites hearings before the Subcommittee of the House Committee on Appropriations on H.R. 4805.[3] From this the Applicant concludes that installation of power facilities was eliminated, not deferred.

The status of Bluestone and the tabulations submitted to the House were specifically considered by the Subcommittee of the Senate Committee on Appropriations, holding hearings on the same legislation in December, 1945. The Senate hearings were attended by the Chief of Engineers, accompanied by General Crawford. A witness raised the question why Bluestone and Detroit Reservoir (on the N. Santiam River) had not been listed in the tabulations submitted by the Corps at the House hearings to show power reservoirs which included power-generating facilities. General Crawford distinguished between the Bluestone and Detroit projects, stating that installation of power-generating facilities was authorized at Bluestone but not at

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[2] In further support of this argument Applicant states that efforts to obtain an agreement for the sale of power have long since been discontinued. It is pertinent here that since 1944 surplus power at flood control reservoirs has been disposed of by the Secretary of Interior in accordance with Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890).

[3] Hearings before Subcommittee of House Committee on Appropriations, *First Deficiency Appropriation Bill for [Fiscal] 1946, H.R. 4805,* 79th Cong., 1st Sess., at 77-78 (1945).

Detroit. He stated that at Bluestone "the power generating facilities are being deferred at present" because the "entire storage capacity is needed for flood control."[4]

Bluestone Reservoir, at New-Kanawha river mile 162, controls the Upper New River Sub-basin; this is an area of 4,565 square miles, about 37% of the entire Kanawha River Basin. The comprehensive report on the Kanawha River Basin in 1935 (H.R. Doc. 91 *supra*) contemplated that additional flood control storage could be obtained by construction of other projects in the sub-basin. Therefore when the Chief of Engineers informed the Congress of a deferral of installation of power-generating facilities at Bluestone it was in aid of his responsibility to make continuous studies of the need for flood control. In such a situation weight is given, in determining jurisdiction, to information supplied by the Engineer Corps to a committee of Congress responsible for water resources legislation. See the *Chapman* case, *supra* (345 U.S. 153, 166).

The Applicant also refers to the construction and financial history of the project as reflected in the annual reports of the Chief of Engineers. By June 30, 1939 total expenditures of $543,960 had been made from emergency relief funds allotted under Executive Order 7183A, at which time the Chief of Engineers reported that the work remaining to be done would be completed under the authorizations contained in the Flood Control Acts of 1936 and 1938. 1939 Ch. of Engineers Rep., Vol. 2, p. 1453. The project, described as including "the construction of a powerhouse providing for the initial installation of two 30,000-kilowatt units, and the ultimate installation of six 30,000-kilowatt units", was carried in the annual reports of the Chief of Engineers (Vol. 2) for *1941* (p. 434); *1942* (p. 1260); *1943* (p. 1184); *1944* (p. 1191) and *1945* (p. 1585).

In January, 1942, construction of the dam was initiated.[5] In 1944 this work was suspended as soon as a safe stopping point was reached. This was because of the wartime policy to conserve materials and manpower.[6] It appears from the annual reports of the Chief of Engineers that sums were appropriated for the project in accordance with estimates which included the cost of installing power-generating facilities. By June 30, 1945, about six million dollars, of a larger sum appropriated, had actually been expended and the dam was about 38 percent constructed. At this stage plans and specifications for construction of the dam, powerhouse and switchyard were complete. Also completed were plans and specifications for "turbine governing equipment, generators, transformers and circuit breakers", etc.[7]

On January 3, 1946, work on the dam was resumed, under supplemental plans, approved by the Chief of Engineers in fiscal 1946, which contemplated elimination of generating units at the project. In 1946 the Chief of Engineers reported a new cost estimate, revised downward to reflect the elimination of power-generating facilities. This estimate covered construction, among other things, of a dam in which was to be installed six penstocks,[8] which were built as part of the project as ultimately completed in 1952.[9]

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[4] *Id.,* Hearings before Subcommittee of Sen. Committee on Appropriations, at 513–514.

[5] '53 Ch. of Engineers Rep., Vol. 2, p. 1331.

[6] '44 Rep., Vol. 1, p. 8. See also Hearings before Subcommittee of House Committee on Appropriations, *War Dep't Civil Functions Appropriation Bill for [Fiscal] 1944,* 78th Cong., 1st Sess., at 33 (1943).

[7] '45 Rep., Vol. 2, pp. 1586–7.

[8] Compare '46 Rep., Vol. 2, p. 1740 *with* '61 Rep., Vol. 2, p. 1156.

[9] '53 Rep., Vol. 2, p. 1331.

The Applicant refers to the fact that the annual reports of the Chief of Engineers, from 1946 on, give the percentage of completion of the project and finally state that "all project work is physically and financially complete." Progress reports on flood control projects follow a standard pattern and are not intended as primary source material on jurisdiction. Read from the beginning in this case, they indicate that the Corps, in accordance with the direction of Congress, treated the Bluestone Reservoir project authorization as including the installation of power-generating facilities. See *United States ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153, 165. These reports could not, in any event, support a conclusion contrary to the direct statement of the Corps to the Congress in 1945 that installation of power facilities had been deferred because of the flood control situation.

Where a multiple-purpose project, authorized for construction as a Federal undertaking, is deauthorized to permit application for a license under the Federal Power Act, such deauthorization is expressly provided for and limited by statute. For example, Congress by the Flood Control Act of 1941 (55 Stat. 638, 645) authorized, as a Federal undertaking, a coordinated project consisting of three flood control and power developments, one of which was at the Markham Ferry site on the Grand River. Congress later modified this authorization to permit construction of the Markham Ferry project by the Grand River Dam Authority, subject to the provisions of the Act of July 6, 1954[10] and the Federal Power Act. Similarly, the provisions of the Flood Control Act of 1950 (64 Stat. 170, 179) were modified to permit development of the Priest Rapids site on the Columbia River, for purposes including flood control, navigation and power, under a Commission license and in accordance with the Federal Power Act and the Act of July 27, 1954.[11] Another instance is the authorization of the development, as a Federal undertaking, of the Alabama-Coosa River for navigation, flood control, power development and other purposes contained in the 1945 River and Harbor Act (59 Stat. 10, 11, 17). In Section 2 of the Act of June 28, 1954,[12] Congress suspended the authorization, insofar as it applied to the Coosa River, to permit power development under a Commission license.

It appears from the foregoing that the Bluestone Reservoir project was authorized as a Federal undertaking for multiple purposes including flood control and power generation, and that, while construction of power-generating facilities has been deferred, authorization for their installation by the Corps of Engineers has not been modified by the Congress.

The cooperatives also moved to dismiss that part of the application for license pertaining to the proposed upstream development on the ground that it pre-empts the Moores Ferry site claimed to be authorized as a Federal undertaking. In our order issuing a preliminary permit[13] we had occasion to note that the North Carolina Electric Membership Corporation questioned the jurisdiction of the Commission to issue a preliminary permit on the ground that, by virtue of the Flood Control Act of 1938 (52 Stat. 1215, 1217), the Moores Ferry site had been authorized for Federal development and that

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[10] 68 Stat. 450. See *United States* v. *Grand River Dam Authority*, 363 U.S. 229; *Grand River Dam Authority*, 8 FPC 635, Project No. 1954; Jan. 18, 1949 (Markham Ferry: dismissing preliminary permit application); 14 FPC 815, Project No. 2183, June 22, 1955 (Markham Ferry issuing license).

[11] 68 Stat. 573. See *PUD No. 2 of Grant County, Washington*, 13 FPC 1462, Project No. 2114, Oct. 21, 1954 (order issuing preliminary permit).

[12] 68 Stat. 302. See *Alabama Power Co.*, 18 FPC 257, Opinion No. 305, Project No. 2146, Sept. 4, 1957 (issuing license).

[13] *Appalachian Power Co.*, 29 FPC 445, Project No. 2317, March 11, 1963 (order issuing preliminary permit).

Applicant's proposed pumped storage development would pre-empt the site. We held, among other things, that under the Flood Control Act of 1938 a reservoir-only project which is a unit of the comprehensive plan, is authorized when it is "selected and approved" for construction by the Chief of Engineers after preliminary surveys and plans have been completed. As the Moores Ferry project has never been selected and approved for construction by the Chief of Engineers in accordance with the Flood Control Act of 1938, it has not been authorized as a Federal undertaking under the Act so as to remove it from the Commission's licensing jurisdiction. See *United States ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153.

Besides petitions to intervene and motions to dismiss the application, the cooperatives have filed answers alleging, among other things, that the Commission should refuse to issue the license and should recommend to the Congress, under Section 7(b) of the Federal Power Act, that a multiple-purpose project at the Moores Ferry site should be undertaken by the United States itself. In this connection the cooperatives state that the reach of the river sought to be developed by the Applicant upstream from Fries, Virginia, is important from the standpoint of flood control, power generation, low flow augmentation and recreation, and that the Applicant's proposed project inadequately provides for these public uses. In view of the importance of the issues raised by Appalachian Power Company's application and the petitions to intervene, a public hearing would be desirable.

The Commission finds:

(1) Intervention by the North Carolina Electric Membership Corporation, the Old Dominion Electric Cooperative, the Blue Ridge Electric Membership Corporation, Mecklenburg Electric Cooperative and the Harrison Rural Electrification Association, Inc., may be in the public interest.

(2) The Bluestone Reservoir project, including power-generating facilities, has been authorized for construction under the direction of the Secretary of the Army and the supervision of the Chief of Engineers.

(3) Federal construction of the Moores Ferry Reservoir project has not been authorized.

(4) It is appropriate and in the public interest to hold a public hearing, as hereinafter provided, on Appalachian's application insofar as it seeks authorization for project works other than at the Bluestone Reservoir project, and respecting the matters involved and issues presented, including the issue whether pursuant to the provisions of Section 7(b) of the Act the Commission should recommend construction of the project works by the United States.

The Commission orders:

(A) The above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions for leave to intervene; and *Provided, further* That the admission of the aforesaid petitioners shall not be construed as recognition by the Commission that the petitioners might be aggrieved because of any order or orders of the Commission in this proceeding.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(e), 7(b), 10(a) and 308 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held on September 13, 1966, at 10:00 a.m. in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., respecting the matters involved and the issues presented in this proceeding.

(C) The following procedure is prescribed for this proceeding:

1. The Applicant shall file by June 7, 1966, with the Secretary of the Commission an original and ten copies of all testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.

2. All other participants, including the Commission staff, shall file by August 2, 1966, with the Secretary, an original and ten copies of all direct testimony and exhibits including qualifications of witnesses.

3. All motions to strike shall be filed with the Presiding Examiner by August 23, 1966, with replies to such motions to be filed by September 1, 1966.

4. All of the testimony, except exhibits, shall be in question and answer form.

5. No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes.

6. Any party submitting more than one exhibit shall enclose a cover sheet listing the title of each exhibit in the sequence in which it is to be marked for identification.

7. The Presiding Examiner will specify the order of cross-examination and time to be permitted for preparation of rebuttal evidence.

(D) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein.

(E) The motions to dismiss the application for license, insofar as they refer to the installation of power-generating facilities at the Bluestone Reservoir project, are hereby granted.

(F) The motions to dismiss the application for license, insofar as they refer to the developments upstream from Fries, Virginia, are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE CINCINNATI GAS & ELECTRIC COMPANY, DOCKET NO. E-7125; THE UNION LIGHT, HEAT AND POWER COMPANY, DOCKET NO. E-7203

ORDER DENYING APPLICATION FOR REHEARING AND MODIFYING OPINION AND ORDER

(Issued March 8, 1966)

On February 17, 1966, a joint application for rehearing of our Opinion No. 485 and accompanying order issued January 19, 1966, 35 FPC 99, in this case, was filed by The Cincinnati Gas & Electric Company (CG&E) and The Union Light, Heat and Power Company (Union). In that opinion, we concluded that certain sales by CG&E and Union are subject to Commission jurisdiction under Section 201 of the Federal Power Act (Act).

We have considered the arguments advanced by CG&E and Union in their application and reject all but the one relating to the status of West Harrison Gas & Electric Company (West Harrison) as a public utility. Except for the latter argument, the petitioners' application raised no new arguments and hence justifies no change in our decision.

The Commission erred in affirming the Examiner's finding that CG&E's wholly-owned subsidiary, West Harrison, is a "public utility" under Section

201(e) of the Act. West Harrison was not a party or intervenor in this proceeding; nor was its status an issue of the Show Cause order instituting this action.

In this connection, on February 17, 1966, West Harrison tendered for filing an application for rehearing, which was conditionally accepted pending Commission action. In its application, West Harrison requests that it be made a party to this proceeding and that we vacate our finding that it is a "public utility" without further hearing, or alternatively, that it be granted an evidentiary hearing on this issue. Inasmuch as the matter was not in issue in the proceeding and is irrelevant to the determination therein, we shall modify Opinion No. 485 to eliminate our finding that West Harrison is a public utility.

We reaffirm our previous holding, however, that CG&E's sale to West Harrison is a sale of electric energy at wholesale in interstate commerce subject to Commission jurisdiction under Sections 205 and 206 of the Act. This finding does not depend upon West Harrison's status as a public utility since it is clearly a "person" within the meaning of Section 201(d) of the Act.

In the light of the foregoing, West Harrison's application for rehearing described above should be rejected for filing.

The Commission further finds:

The assignment of error and grounds for rehearing advanced by CG&E and Union present no facts or legal principles which warrant any change or modification in the Commission's Opinion No. 485 and accompanying order, except to the extent described herein.

The Commission orders:

(A) The application for rehearing filed by CG&E and Union on February 17, 1966, is denied.

(B) Opinion No. 485 and accompanying order is modified to eliminate the finding that West Harrison is a public utility.

(C) West Harrison's application for rehearing, dated February 15, 1966, is rejected for filing.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66-203

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND TERMINATING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1966)

On December 20, 1965, Lone Star Gas Company (Applicant) filed in Docket No. CP66-203 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

The facilities proposed for abandonment are various lateral supply pipelines and related facilities extending from Applicant's existing pipeline system to a single well or to a single point in the area of production. Such lines and facilities, located on portions of Applicant's system and operated for the transportation of natural gas in interstate commerce, are no longer needed or required to transport gas into Applicant's system due to the depletion of reserves or rerouting of the gas production through other facilities for injection into Applicant's system.

Specifically, Applicant seeks permission and approval to abandon the operation of the following pipelines and appurtenant facilities which would be removed and salvaged: (1) 194 feet of 3-inch pipeline, 109 feet of 4-inch pipeline with 4-inch metering facilities and 66 feet of 2-inch pipeline with 2-inch metering facilities, all located in Robberson Field, Garvin County, Oklahoma, (2) 188 feet of 4-inch pipeline located in the Northeast Tucker Field, Stephens County, Oklahoma, (3) 1,460 feet of 4-inch pipeline located in the Northeast Healdton Field, Jefferson County, Oklahoma, (4) 203 feet of 2-inch pipeline located in the Sho-Vel-Tum Field, Stephens County, Oklahoma, (5) 8 feet of 4-inch pipeline and 4 feet of 3-inch pipeline located in the Cruce Field, Stephens County, Oklahoma, (6) 27 feet of 3-inch pipeline with 3-inch metering facilities located in the Banner Church Field, Stephens County, Oklahoma, (7) 1,162 feet of 2-inch pipeline located in the Sherman Field, Grayson County, Texas, (8) 164 feet of 4-inch pipeline with metering facilities located in the Northeast Greenville Oil Field, Love County, Oklahoma, (9) 35,003 feet of 6-inch pipeline with 6-inch metering facilities located in the Good Omen Field, Smith County, Texas.

Applicant states that the proposed abandonment will not result in the abandonment or any diminution of natural gas service to any city, town, community or customer or lessen the service presently being rendered by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates of public convenience and necessity heretofore issued to Robberson Investment Company on May 31, 1960, in Docket No. G–18759 (consolidated with Docket No. G–4457), Home Stake-Production Company on August 10, 1960, in Docket No. G–17387 (consolidated with Docket No. G–13673), Sinclair Oil & Gas Company, on March 18, 1960, in Docket No. G–18286 (consolidated with Docket No. G–10559), M. W. Crockett, *et al.*, on June 6, 1961, in Docket No. CI60–538 (consolidated with G–7453), L. L. Gage and Minnie Gage on February 17, 1964, in Docket No. CI64–727, and Keith F. Walker on February 21, 1962, in Docket No. CI61–1239 (consolidated with Docket No. CI60–193), be terminated, effective on the date of issuance of this order.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

(C) The certificates of public convenience and necessity heretofore issued to Robberson Investment Company on May 31, 1960, in Docket No. G-18759 (consolidated with Docket No. G-4457), Home Stake-Production Company on August 10, 1960, in Docket No. G-17387 (consolidated with Docket No. G-13673), Sinclair Oil & Gas Company, on March 18, 1960, in Docket No. G-18286 (consolidated with Docket No. G-10559), M. W. Crockett, *et al.*, on June 6, 1961, in Docket No. CI60-538 (consolidated with G-7453), L. L. Gage and Minnie Gage on February 17, 1964, in Docket No. CI64-727, and Keith F. Walker on February 21, 1962, in Docket No. CI61-1239 (consolidated with Docket No. CI60-193), are terminated, effective on the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-161

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1966)

On November 23, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP66-161 an application and supplement thereto on January 3, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation of approximately 10 miles of 6-inch pipeline, certain line taps and metering facilities for the delivery in interstate commerce of natural gas transported to serve purchasers who use the gas in the operation of oil and gas leases, all as more fully set forth in the application and supplement thereto. Applicant states that it inadvertently failed to file an application when certain of its facilities were converted from intrastate to interstate operation.

Applicant states that the natural gas requirements of the aforementioned purchasers during the 12 month period which ended August 31, 1965, was 312,585 Mcf.

The transmission line, line taps and metering facilities involved are located in Yazoo, Madison, and Franklin Counties, all in the State of Mississippi. The line taps and metering facilities Applicant proposes to continue to operate are used to serve the following named purchasers at the stated locations: Billy Bridewell, Tinsley Field; Edwards Murray Oil Company, Inc., Tinsley Field; W. L. Ethridge, Sr., Tinsley Field; Humble Oil & Refining Company, Madison Co., Miss.; Hassie Hunt Trust, Tinsley Field; Jones-O'Brien, Inc., Tinsley Field; Kingwood Oil Company, Tinsley Field; Mobil Oil Company, Tinsley Field; John W. McGowan, Madison Co., Miss.; John W. McGowan, Franklin Co., Miss.; Sinclair Oil & Gas Company, Tinsley Field; Sohio Petroleum Company, Tinsley Field; Tinsley Well Service, Inc., Tinsley Field. The aggregate cost of such facilities when constructed between 1942 and 1962 was $8,739.03. No new construction is proposed by the instant application.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 3, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The proposed continued operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed continued operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Southern Natural Gas Company, in this proceeding authorizing the continued operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION OIL COMPANY OF CALIFORNIA (OPERATOR), ET AL., DOCKET NO. CI62–1120; THE PURE OIL COMPANY, DOCKET NO. CI65–331

ORDER DENYING SETTLEMENT AND DISMISSING APPLICATION

(Issued March 10, 1966)

On November 24, 1965, Union Oil Company of California (Union) filed a motion for approval of settlement, for issuance of conditioned permanent certificate, and request for expeditious determination. On January 5, 1966, the

Public Service Commission for the State of New York (New York) filed an objection to the motion for settlement.

In the consolidated proceeding, Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, the Commission considered the question of issuance of certificates to virtually all of the then pending certificate applications in Southern Louisiana. During the pendency of that proceeding a number of applications were severed from the main proceeding and certificates of public convenience and necessity were issued upon proposed settlements. Among the settlements which were approved was that of Union in Docket No. CI62–1120, 29 FPC 1283. The Pure Oil Company (Pure), at that time independent of Union, but since then merged into Union, effective July 16, 1965, objected to the settlement of its 50% interest in acreage in Block 49 field, South Marsh Island area. 29 FPC at 1285.[1] The Commission stated in that order: "Insofar as the * * * Pure interests are concerned, the application remains consolidated for hearing in the Union Texas Petroleum, *et al.*, Docket No. G–13221, *et al.*, proceeding and Union's temporary authorization remains in effect as to * * * Pure's interests." On July 23, 1964 the Commission issued its Opinion and order in Union Texas Petroleum, *et al.*, 32 FPC 254. While noting that the Union Docket No. CI62–1120 had been severed for settlement (*Ibid.* at 276), the Commission inadvertently failed to state that the Pure interest, theretofore represented by Union in Docket No. CI62–1120 remained consolidated with the remaining applications in the Union Texas Petroleum proceeding. On September 30, 1964 Pure filed with the Commission in Docket No. CI65–331 an application for a certificate and a related rate schedule covering the *same* 50% interest in Block 49, proposing therein an initial price of 19.5¢. The application was accepted erroneously in view of the fact that it was filed with regard to a matter which had already been determined by the Commission in the *Union Texas Petroleum* order.

Union and Transcontinental Gas Pipe Line Corporation (Transco) on November 11, 1965, entered an agreement purporting to settle the terms of the theretofore unsettled (but certificated, as noted above) Pure interest in Block 49, by which the same terms applicable to Union's settlement would be made applicable to this interest. New York objects on the ground that the Commission has already issued a certificate for the acreage here involved at 18.5¢ per Mcf and further because, in any event, the "settlement" price is too high. We agree that it was the intent of the Commission that Pure's interests were encompassed within the decision of the Commission embodied in *Union Texas Petroleum*, Opinion No. 436, *supra*. Through inadvertance it was not listed among those dockets for which certificates were issued. Nonetheless, the language in the Union settlement order makes it abundantly clear that the Commission considered that the Pure interests in that Docket, CI62–1120, were to remain consolidated with the Union Texas Petroleum proceeding. When the decision was issued in that proceeding it was intended that it be effective against all of the pending applications. The subsequent application by Pure in Docket No. CI65–331 was erroneous and should have been rejected; it will now be dismissed. Since we consider that the certificate to Pure was issued in Docket No. CI62–1120 as a result of our order in Union Texas Petroleum, *et al.*, Opinion No. 436, 32 FPC 254, any further settlement proceedings would be inappropriate.[2] Accordingly, we shall deny the settlement.

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[1] Pan American Petroleum Corporation also objected to the settlement of its interest at the time. It subsequently settled its interest in Docket No. CI62–1120, prior to the issuance of the Commission's decision in the consolidated proceeding. 30 FPC 1324.

[2] In view of the objection entered by New York, we would not now grant the settlement in any event.

The Commission orders:

(A) The Motion for Approval of Settlement for Issuance of Conditioned Permanent Certificate filed by Union Oil Company of California in Docket No. CI62-1120 is denied.

(B) The Application submitted by The Pure Oil Company[3] in Docket No. CI65-331 is dismissed.

(C) Union Oil Company of California shall make all filings required by our rules and our order in Union Texas Petroleum, *et al.*, Docket No. G-13221, *et al.*, Opinion Nos. 436 and 436-A, 32 FPC 254, 952, including the filing of a supplement to its Rate Schedule No. 63 to reflect an 18.5¢ rate for deliveries from Pure's former interest.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
PROJECT NO. 2338

ORDER DENYING MOTION FOR THE PRODUCTION OF MEMBERSHIP LISTS AND FOR EXTENSION OF TIME TO ANSWER PETITIONS TO INTERVENE

(Issued March 11, 1966)

On March 1, 1966 Consolidated Edison Company of New York, Inc., the Applicant for a license for a proposed pumped storage hydroelectric project along the Hudson River at Cornwall, New York (Project No. 2338), filed a motion for a list of the names of the officers and members of the several additional membership corporations, unincorporated associations, and organizations seeking to intervene in this proceeding, and for an extension of time for the parties to the proceeding to object to all such petitions to intervene.

The principal points made by the applicant in support of his motion are: (1) that there are presently 17 parties to the proceeding exclusive of the Applicant and the Commission staff; (2) as of February 28, 1966, the Applicant had received 27 additional petitions to intervene and that several more are anticipated by March 15, 1966 when the time to file additional petitions terminates; (3) that many of the new petitions are substantially the same as those of present interveners to the proceeding; (4) that few of the petitioners now seeking intervention have offered any specific evidence of any nature but simply state a position for or against the proposed project; (5) the issues in this proceeding are important and complex requiring expert analysis and consideration by highly qualified technical and scientific consultants; and (6) that the proceedings are threatened with obscurity by extraneous rhetoric and that some practical limits must be placed upon additional intervention.

In answer to the motion, Scenic Hudson Preservation Conference, Intervener, recognizes that there is a common concern among many interveners and those seeking intervention. Scenic Hudson points out that, if it should prove desirable, in the interest of expedition of the proceedings the Trial Examiner may take appropriate action to limit the number of attorneys entitled to argue objections and cross-examine witnesses.

The Applicant and other parties will have opportunity during the hearing to object to unduly repetitious and to incompetent testimony in the event such testimony is presented. Thus, the proceedings need not be unduly prolonged and the issues need not be obscured by permitting additional interventions even though some of them may have common interests in supporting or opposing the project. We believe, however, the public interest does not require that Petitioners produce the names of their individual members and that such action would only add a further unnecessary complication to the proceeding. Nor is there any need for enlarging the period for answering petitions to intervene.

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[3] Union Oil Company of California, by merger having acquired Pure, is the responsible party in that application.

The Commission finds:

Good cause has not been shown for the production of membership lists or for granting additional time to answer petitions to intervene.

The Commission orders:

The aforesaid motion for production of membership lists and for extension of time to answer petitions to intervene, is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ST. CROIX PAPER COMPANY, PROJECT NO. 2492

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 11, 1966)

On January 14, 1966 a "Petition for Reconsideration and Rehearing" was filed by Phillip J. Hennessey III (Petitioner), pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure, for himself and 137 other individuals similarly situated, with respect to an order of the Commission, issued December 17, 1965, 34 FPC 1482, denying their petition to intervene which was filed on February 24, 1965 in the above-entitled proceeding upon an application for license by the St. Croix Paper Company (Applicant) for Project No. 2492. Applicant filed a reply to Petitioner's application for rehearing on January 24, 1966. The Commission granted rehearing for further consideration in an order issued February 8, 1966, 35 FPC 207.

Petitioner contending that intervention in the instant proceeding is essential to the full preservation of the rights and interests of landowners and residents in the area and that he and those whom he represents are entitled to be represented at a hearing upon Applicant's application, reiterates the allegations made in his petition of intervention that the maximum and minimum water levels of Spednik Lake proposed by the Applicant have not been shown to be reasonable. Petitioner avers that the Commission in its order of December 17, 1965 did not make reference to a minimum water level for Spednik Lake. It should be noted that the Commission merely referred to the maximum elevation of Spednik Lake as being among things which were prescribed in the International Joint Commission (IJC) order of October 15, 1965. The IJC order itself, however, does prescribe minimum levels for Spednik Lake.

Petitioner objects to the disparity between the minimum discharge of 200 cfs from Spednik Lake and 75 cfs from East Grand Lake provided in the order of the International Joint Commission, issued October 15, 1965, and offers to submit evidence on the affect of the Applicant's past operation of the dams at Vanceboro (Project No. 2492) and Forest City upon navigation on Spednik and East Grand Lakes.

In addition, Petitioner states that a hearing should be ordered to assess the impact of Applicant's expansion of its pulp and paper plant at Woodland, Maine as well as its construction of new fishways at Woodland and Grand Falls upon its application for license herein.

Petitioner contends that the action of the IJC in this case prescribing maximum and minimum water levels and minimum discharges at Spednik and East Grand Lakes does not constitute an adjudication of his rights before the Federal Power Commission and in effect seeks review of the terms of the IJC order before this Commission. Although we indicated, in our order of December 17, 1965 denying petitioner's intervention, that the operating levels of Lake Spednik are subject to the jurisdiction of the International Joint Commission, it is necessary to elaborate upon our reasoning since it has been again questioned by the petitioner.

The Boundary Waters Treaty of 1909 created the International Joint Commission, with representatives of the United States and Canada, having authority to "pass upon" all "uses or obstructions or diversions * * * of boundary waters." (Articles III, VIII of the Treaty.)

The protection of all interests affected and control of water levels in international boundary waters is expressly committed to the International Joint Commission by the Treaty. Article VIII of the Treaty provides in part as follows:

> The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.
>
> *In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters* or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, *the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.* [Emphasis added.]

The Federal Power Commission, though having jurisdiction under Section 4(e) of the Federal Power Act (49 Stat. 839, 16 USCA 797(e)) to issue a license for power facilities on the U.S. side of the International Boundary Line, is not empowered by that Act or any other legislation, to pass upon questions pertaining to the natural levels or flow of boundary waters. By the terms of the Boundary Waters Treaty of 1909, jurisdiction over such matters is placed exclusively in the International Joint Commission. The determination of such water levels is peculiarly appropriate for consideration by an international agency.

The provisions of the Federal Power Act affect in no degree the jurisdiction of the International Joint Commission, but under the Federal Power Act the Power Commission becomes the agency of the United States with authority to grant permits or licenses in accordance with which applicants may construct, maintain, and operate on the American side of the International Boundary such projects as may have received the prior approval of the International Joint Commission. (See First Annual Report of the Federal Power Commission at page 50.)

The International Joint Commission has undertaken to perform the functions committed to it by the Treaty. In its Order of Approval dated October 15, 1965, it has established the levels for Lake Spednik and East Grand Lake after a hearing in which all interested persons were afforded an opportunity to present evidence and to be heard on matters relating to the water levels and flow of boundary waters. While Petitioner states that he was not present at the IJC hearing, it appears that several of the persons he represents were present and Petitioner does not allege that he was denied an opportunity to appear in that proceeding. The IJC has not only provided for the regulation of water levels in its order, it has also reserved jurisdiction to supervise the matter through its Board of Control and to change requirements if the circumstances indicate the necessity. This Commission, accordingly, would not prescribe minimum or maximum levels and a minimum discharge for Spednik Lake which are inconsistent with those provided in the order of the IJC.

The additional matters raised by the Petitioner for the first time in his application for rehearing, relate to Applicant's expansion of its Woodland pulp and paper plant and construction of new fishways at its Woodland and Grand Falls Dams which are not involved in this proceeding on the license application for the upstream Vanceboro Dam.

We conclude that intervention by Petitioner and those whom he represents has not been shown to be necessary or appropriate in carrying out the provisions of the Federal Power Act.

The Commission finds:

Upon further consideration pursuant to the order issued February 8, 1966, it is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a–825r), that Petitioner's application, filed January 14, 1966, for rehearing on the order issued December 17, 1965 denying intervention in the proceeding upon the license application for Project No. 2492, be denied.

The Commission orders:

The aforesaid application for rehearing of the Commission's order denying intervention, issued December 17, 1965, is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued March 14, 1966)

On February 18, 1966, Hunt Oil Company, *et al.*,[1] filed a document designated a "Petition for Rehearing" of the Commission's order of January 24, 1966, 35 FPC 128, rejecting Hunt's appeal from a ruling of the presiding examiner which had refused to require the filing of certain data in these proceedings. The appeal was rejected because it set forth no facts which constituted extraordinary circumstances justifying consideration of the appeal.

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[1] Hassie Hunt Trust, Lamar Hunt, N. B. Hunt, William Herbert Hunt Trust Estate, Lamar Hunt Trust Estate, H. L. Hunt, Caroline Hunt Sands, Caroline Hunt Trust Estate, A. G. Hill, N. B. Hunt Trust Estate, W. H. Hunt, Hidalgo Gas Production Corporation and Placid Oil Company.

An interlocutory order of this nature is not subject to an application for rehearing and we shall treat it as a motion for reconsideration under Section 1.12 of the Commission's Rules of Practice and Procedure. So considered, it sets forth no facts which would justify further consideration of the appeal.

The Commission orders:

The motion for reconsideration filed by Hunt on February 18, 1966, is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GULF OIL CORPORATION, DOCKET NOS. RI63-265, RI64-83 AND RI64-176

ORDER DENYING PETITIONS TO WITHDRAW INCREASED RATE FILINGS

(Issued March 14, 1966)

On January 6, 1966, Gulf Oil Corporation (Gulf) filed petitions in the above-entitled proceedings seeking to withdraw its increased rate filings[1] in excess of the 16 cents per Mcf permanently certificated rates under its FPC Gas Rate Schedule Nos. 138, 193, 194, 197, 213 and 215 for its jurisdictional sales of natural gas in the Permian Basin Area of Texas and New Mexico. All of the sales involved are to Transwestern Pipeline Company, except Gulf's sale under its FPC Gas Rate Schedule No. 138 to West Texas Gathering Company.

In its petitions, Gulf proposes, upon being permitted to withdraw said filings, to refund with interest all of the amount of increase collected thereunder; and requests that the aforementioned docketed proceedings be severed from the "Show Cause" proceedings in Docket No. AR61-1, *et al.*, instituted by order issued therein on August 5, 1965, 34 FPC 424, and that Docket Nos. RI63-265, RI64-83 and RI64-176 be terminated insofar as they relate to the withdrawn filings. Gulf states that the intent and purpose of the petitions is to place Gulf and its purchasers in the same position they would have been in had the increased rates involved never have been filed and placed into effect.

An answer in opposition to Gulf's petition to withdraw its increased rate filing in Docket No. RI64-176 was filed by telegram on February 6, 1966 by The People of the State of California and the Public Utilities Commission of the State of California (California Commission). In its answer, the California Commission states:

> * * * Petitioner Gulf seeks to re-establish an unjust and unreasonable rate. It is obvious that by this petition, as well as by its similar petition in Docket No. RI64-83, Gulf is attempting to avoid the effect of Opinions 468 and 468-A, and thereby retain the benefits of higher rates than those

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[1] Gulf proposes to withdraw its increase in rates from 16 cents to 17 cents per Mcf under its Rate Schedule No. 138, which is involved in Docket No. RI63-265, and under its Rate Schedule Nos. 193, 194 and 197, which are involved in Docket No. RI64-173; and also to withdraw its increase in rates from 16 cents to 16.077 cents under its Rate Schedule Nos. 213 and 215 which are involved in Docket No. RI64-83. The former increased rate group represent 1.0 cent per Mcf periodic increases, and the latter reflect reimbursement for the 0.55 cents per Mcf New Mexico Emergency School Tax increase of April 1, 1963. All of the increased rates involved are being collected subject to refund in the respective docketed proceedings.

> prescribed for all dockets in the Permian Basin area rate proceeding, Docket No. AR61-1. Granting these petitions would thwar(t) the purpose of area rate making. * * *

The subject Section 4(e) proceedings under the Natural Gas Act were not consolidated in the Permian Basin Area Proceeding, Docket No. AR61-1, *et al.*, but were therefore included in the aforementioned "Show Cause" proceeding to afford Gulf, and the other respondents, the hearing to which they are entitled for the purpose, among other things of determining the refund obligations under their formerly non-consolidated Section 4(e) proceedings. The California Commission's objection appears to be directed to the question of whether or not the Commission has authority to require refunds in a Section 4(e) proceeding below the last unsuspended rate. It is apparently the California Commission's position that during the refund period, Gulf should make refunds to a rate level of 14.5 cents per Mcf, or other quality adjusted rate, for the Texas sales and 13.5 cents per Mcf, plus applicable state and local production taxes, for the New Mexico sales, even though Gulf's last clean rate for these sales is 16 cents per Mcf.

While certain parties briefed this issue in the Permian Basin Area rate proceeding, it was not decided in Opinion No. 468-A, (34 FPC 1068 at 1075) since it was not clear that the issue was raised as a result of that order, and we indicated that a decision thereon would be reached "* * * when and if it is established that any refunds below the last clean rate are required". We do not deem it appropriate to rule on this question in the context of petitions to withdraw increased rate filings and we shall deny the petitions as filed. However, if Gulf so desires, we shall permit withdrawal of the increased rate filing and refund of the amount of the increase but will not terminate the proceeding so that the question of further refunds may be determined upon consideration of the problem in the Permian Basin area generally.

The Commission orders:

For the foregoing reasons, Gulf's petitions filed January 6, 1966 in Docket Nos. RI63-265, RI64-83 and RI64-176 are denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-190

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING SERVICE AGREEMENT FOR FILING

(Issued March 14, 1966)

On January 12, 1966, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP65-190 an application to amend the certificate of public convenience and necessity issued in said docket on March 30, 1965, 33 FPC 655, by authorizing an increase in the Maximum Daily Quantity (MDQ) of natural gas to be delivered by Applicant to Ohio Valley Gas Corporation (Ohio Valley) from 6,000 Mcf per day to 6,750 Mcf per day, as more fully set forth in the application to amend.

Applicant states that Ohio Valley was a customer of American Louisiana Pipe Line Company (American Louisiana) prior to the merger of American Louisiana into Applicant on January 1, 1966, and had contracted to purchase the maximum contract demand available to it under the American Louisiana tariff, which was 6,000 Mcf per day.

Applicant further states that following approval of the merger on December 23, 1965, and the availability of increased contract demand service under Applicant's Rate Schedule ACQ-1, Ohio Valley reviewed its market requirements and concluded that it requires an additional 750 Mcf per day in order to provide for additional requirements resulting from the attachment of more residential and commercial heating customers than anticipated, as well as an increased firm industrial use.

Applicant has concurrently submitted for filing the new service agreement between it and Ohio Valley, with a request that the said agreement become effective January 1, 1966, and a waiver of the Commission's Rules and Regulations as to notice so as to permit the service agreement to become effective as proposed.

Due notice of the filing of the petition to amend was published in the Federal Register on January 22, 1966 (31 F.R. 922). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP65-190 on March 30, 1965, be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the superseding service agreement between Applicant and Ohio Valley Gas Corporation dated January 1, 1966, be accepted for filing and made effective as of the date of this order.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Michigan Wisconsin Pipe Line Company in Docket No. CP65-190 on March 30, 1965, is amended by authorizing the sale and delivery by Applicant to Ohio Valley Gas Corporation of an additional MDQ of natural gas of 750 Mcf, as hereinbefore described and as more fully described in the application to amend.

(B) The superseding service agreement between Applicant and Ohio Valley Gas Corporation dated January 1, 1966, is accepted for filing and made effective as of the date of this order.

(C) In all other respects the certificate of public convenience and necessity shall remain in full force and effect.

(D) Applicant's request for waiver of notice requirements of Section 154.22 of the Commission's Regulations is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-50

ORDER DENYING REHEARING

(Issued March 14, 1966)

On February 25, 1966, Panhandle Eastern Pipe Line Company filed an Application for rehearing of the Commission's order of January 28, 1966, 35 FPC 164, granting City of Fulton, Missouri intervention in Docket No. CP66-50, a proposed direct sale by Panhandle to H. K. Porter Co. brick plant.

Of all nine grounds set out by Panhandle, only Nos. 7 and 8 differ from prior assertions of Panhandle or are material and they jointly present a single question: Has the City of Fulton complied with part 156 of the Regulations by filing a "7(a) application".

In the Panhandle-City of Fulton case, the City is competing with Panhandle for the right to make an industrial sale to H. K. Porter Co. While Fulton's application, technically does not comply with the Commission's Regulations, all data called for in part 156 of the Regulations are being supplied by Fulton in the formal hearing. In this case, City of Fulton has the burden of proof and no undue burden is being shifted to Panhandle. If at the conclusion of the hearing, Fulton has not met its burden, Panhandle may move to dismiss the application. Substantive arguments can be prosecuted in the hearing now in progress.

The Commission orders:

The petition for rehearing of the Commission's order of January 28, 1966, granting City of Fulton's intervention is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

POTOMAC LIGHT AND POWER COMPANY, PROJECT NO. 2515

ORDER ISSUING LICENSE (MINOR)

(Issued March 14, 1966)

Application was filed on April 14, 1965 by Potomac Light and Power Company (Applicant) of Martinsburg, West Virginia, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2515, known as Harpers Ferry Hydro Station, located on the Potomac River at river mile 173, in Jefferson County, West Virginia, and Washington County, Maryland. No lands of the United States are affected by the project.

According to the application, the project has been completed and in service since 1912, and it appears that no substantial alterations have been made to the project. Applicant owns the dam and other project works located on the Potomac River between the States of West Virginia and Maryland.

From its mouth in the Chesapeake Bay, to its forks opposite Haines Point, at Washington, the Potomac River has an available channel depth of 24 feet throughout, although in many places much greater depths occur ranging up to 100 feet. At Haines Point the channel depth changes to 20 feet and continues to this depth to Key Bridge, at Georgetown, D.C. Near its mouth the Potomac averages about 6.5 miles in width, decreasing to about 1,200 feet at Key Bridge.

According to available historical documents, the use of artificial works to improve navigation on the upper Potomac dates back to the earliest attempts to promote trade between the City of Washington and the rapidly growing frontier towns lying to the west of the mountains. The first scheme of improvement was carried out by the Potowmack Co., organized in 1785, under the leadership of George Washington, its first president. The project adopted provided for the use of the main stream for the most part and lateral lock canals at Little and Great Falls. Work under the project progressed slowly and the waterway was not opened to through navigation until 1802. By means of the work constructed, continuous navigation was made possible between Washington and Cumberland, Maryland, at mile 307 on the North Branch of the Potomac River. The commerce carried to 1817 is given as 106,834 tons, employing 9,944 boats. The value of this tonnage is given as more than seven million dollars. The present canal, known as the Chesapeake and Ohio Canal, a lateral lock canal following the Maryland shore of the Potomac River from Washington, D.C., to Cumberland, was completed in 1850 at a cost of over eleven million dollars. Six dams at various points on the Potomac once served to supply different levels of the canal with water. Until the end of the last century, the canal was of considerable commercial importance, the principal commodity carried being coal. The best year was 1875 when nearly one million tons were carried and some 700 boats were in use.

The Secretary of the Army and the Chief of Engineers have reported that a study of the Potomac River and its tributaries was authorized by a Resolution of the Senate Public Works Committee, dated January 26, 1956, which requested a review of a previous report on the Potomac River and Tributaries[1]; a subsequent Resolution by the same Committee, dated July 6, 1959, and other resolutions expanded the scope of the study and while the report on the result of such study has been completed by the District and Division Engineers, the report has not been submitted to Congress. The report, dated February 1963, recommends a comprehensive plan for development of the water resources of the Potomac River Basin for the purposes of flood control, water supply, water quality control, and recreation. The report on the application for license also advised that the plans of the project structures affecting navigation are satisfactory, and no objection to the issuance of a license for the project was offered.

The Department of the Interior, in reporting on the application, advised that the project as presently operated does not adversely affect fish and wildlife and no fishway is needed at this time, but it did recommend for inclusion in any license for the project, two conditions in the interests of fish and wildlife resources as set forth in Article 7 of attached Form L-9 and Article 15.

The Department of Health, Education, and Welfare has recommended that the Potomac River's downstream flow be maintained equal to the river's incoming flow during naturally low stream flow periods to prevent adverse effects on water quality in the river, as provided for in Article 14.

By Article 13 we are requiring Applicant to file Exhibit R in conformance with § 4.41 R of the Commission's Regulations under the Federal Power Act.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.* (33 FPC 275) we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 days thereafter.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

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[1] Published as House Document No. 622, 79th Cong. 2d Session (1946).

The Commission finds:

(1) The Potomac River, from its mouth in the Chesapeake Bay, at least upstream therefrom to Cumberland, Maryland, at mile 307 on its North Branch, is a navigable waterway of the United States.

(2) Harpers Ferry Hydro Station Project No. 2515 is located along navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of West Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,120 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It shall be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act: Sections 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d), 10(f); 14, except insofar as the power of condemnation is reserved, 15, 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Potomac Light and Power Company (Licensee) of Martinsburg, West Virginia, under Sections 4(e) and 10(i) of the Act, for a period effective April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2515 located on the Potomac River, a navigable water of the United States, in Jefferson County, West Virginia, and Washington County, Maryland, subject to the terms and conditions of the Federal Power Act insofar as not expressly waived herein, which Act is incorporated by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Harpers Ferry Hydro Station Project No. 2515 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits of which are otherwise defined;

(ii) a 1,700-foot concrete capped log-and-stone dam which has an 18-foot maximum height and a 278-foot crest elevation; a 4,500-foot long head race (50–100 feet wide and 15–20 feet deep) formed by the south bank of the Potomac River and a parallel masonry wall which extends downstream from the dam; and a reinforced concrete and brick powerhouse (72 feet x 42 feet in plan) which houses two vertical shaft generators, rated at 240 kw and 600 kw, connected to two vertical shaft water wheels, rated at 330 hp and 900 hp, respectively; and

(iii) all other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and which are located in the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States", (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions which are set forth as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962: For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $56.00 per annum.

Article 13. The Licensee shall, within one year from the date of issuance of this license, submit for Commission approval an Exhibit R for this project which conforms to § 4.41 R of the Commission's Regulations under the Federal Power Act.

Article 14. In the interest of water quality controls the Licensee shall, during periods of low flow in the Potomac River, utilize through its plant turbines all water which is made available to it, thus maintaining an outflow equal to the incoming flow at the project.

Article 15. The Licensee shall, for the conservation and development of fish, wildlife, and recreation resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Maryland Department of Game and Inland Fish or West Virginia Department of Natural Resources, after notice and opportunity for hearing and upon a finding based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(D) The terms and conditions of the Act, which it has been found to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP65-392

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 14, 1966)

On December 22, 1965, South Georgia Natural Gas Company (Applicant) filed in Docket No. CP65-392 an application to amend the order of the Commission issued in said docket July 27, 1965, 34 FPC 122, by requesting authorization to construct and operate 30.52 miles of 6-inch pipeline from South Georgia's 10-inch line, to the Occidental Corporation of Florida (Occidental) in lieu of the 13.0 miles of 4-inch and 13.6 miles of 6-inch pipeline presently authorized for construction and operation between the same points and to provide two delivery points for Occidental in lieu of the one presently authorized. Applicant also requests that the time within which the facilities are to be constructed and placed in actual operation as set forth in the aforementioned order of the Commission issued on July 27, 1965, be extended from eight months to twelve months from the date of said order. The proposals involved are more fully set forth in the application.

Occidental is expanding its chemical plant for the production of phosphates, phosphoric acid and sulphuric acid. To meet the fuel needs of the expanded plant, it has contracted with Applicant for *all available gas up to 4,125 Mcf per day*. Deliveries will be on *an interruptible basis*. Term of the contract is 10 years. South Georgia estimates that the deliveries will be approximately 1,095,760 Mcf annually.

Applicant states that Occidental's beneficiation plant proposed to be served by the aforementioned certificated 6-inch and 4-inch pipeline has been constructed and is now in operation and that Occidental is now in the process of constructing additional units approximately 3,000 feet west of the existing plant. Because of the location of the additional units, the proposed location of Applicant's 6-inch transmission line, and the mining operations in the area, the most practical method of making gas deliveries to the additional units is by a second delivery point, approximately 3,000 feet upstream from the originally authorized delivery point, on Applicant's proposed 6-inch pipeline.

Applicant now estimates the total cost of its proposed facilities to be $625,000, an increase of $79,000 over the $546,000 originally estimated for the facilities presently authorized.

Due notice of the subject application to amend has been given by publication in the Federal Register on January 8, 1966 (31 F.R. 279). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 27, 1965, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued July 27, 1965, in Docket No. CP65-392 is amended so as to authorize Applicant to construct and operate 30.52 miles of 6-inch pipeline from South Georgia's 10-inch pipeline to the Occidental Corporation of Florida (Occidental) in lieu of the 13.0 miles of 4-inch and 13.6 miles of 6-inch pipeline presently authorized for construction and operation between the same points, and to provide for two delivery points for Occidental in lieu of the one presently authorized; said order is further amended so as to extend the time for completion and commencement of operation of said facilities to August 1, 1966.

(B) Applicant shall not deliver to Occidental more than 4,125 Mcf of natural gas per day on an interruptible basis.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. G-14587

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 14, 1966)

On December 22, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. G-14587 a petition to amend the order of the Commission issued in said docket August 7, 1959, 22 FPC 211, as amended by orders issued January 25, 1962, 27 FPC 176 and July 1, 1964, 32 FPC 4, in said docket by requesting authorization for the transportation and delivery of up to 2,900 Mcf of natural gas per day to Hunt Oil Company (Hunt) at Hunt's refinery in Tuscaloosa, Alabama, in lieu of the 1,800 Mcf presently authorized, all as more fully set forth in the application to amend.

The application states that Hunt has advised Applicant that due to the expanded capacity of its refinery, Hunt's natural gas requirements have increased from a maximum of approximately 1,800 Mcf of gas per day to a maximum of approximately 2,900 Mcf per day. The application further states that Applicant and Hunt have entered into an amendatory agreement, dated November 10, 1965, providing, subject to appropriate authorization by the Commission, for delivery of the increased quantities of interruptible gas specified above.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on January 8, 1966 (31 F.R. 279). No protest or petition to intervene has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 7, 1959, in Docket No. G-14587 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 7, 1959, is further amended so as to authorize Applicant to transport and deliver up to 2,900 Mcf of natural gas daily on a preferred interruptible basis to Hunt Oil Company's refinery in Tuscaloosa, Alabama, in lieu of the 1,800 Mcf of proferred interruptible natural gas presently authorized.

(B) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contract maximum obligations of Applicant for firm service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66–155

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 14, 1966)

On November 16, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP66–155 an application, as supplemented on December 13, 1965, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 4.7 miles of 4½-inch natural gas pipeline and related metering and regulating facilities which comprise its Spaulding Branch Line, as more fully set forth in the application.

The Spaulding Branch Line was certificated in the Commission's order issued on September 15, 1944, in Docket No. G–552, 4 FPC 717, to serve the Sintering Plant of Republic Steel Corporation (Republic) near Birmingham in Jefferson County, Alabama.

Republic has discontinued its sintering operation and the last gas purchase from Applicant was made on May 8, 1964. Republic has informed Applicant that it has no present intention of resuming purchases of gas. Applicant cancelled the gas purchase contract effective July 31, 1965. Republic was the only customer served from the facilities to be abandoned.

Applicant proposes to abandon the pipeline in place and to salvage the metering and regulating facilities.

Due notice of the filing of the application was published in the Federal Register on December 3, 1965 (30 F.R. 15002). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on March 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation with its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment hereinbefore described, as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Southern Natural Gas Company of the facilities hereinbefore described, and more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

T. L. JAMES & COMPANY, INC., ET AL., DOCKET NO. G-16492, ET AL.; AUSTRAL OIL COMPANY INCORPORATED, DOCKET NO. G-20289; NICKLOS OIL & GAS COMPANY (OPERATOR), ET AL., DOCKET NO. G-20290

ORDER APPROVING OFFER OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued March 14, 1966)

Austral Oil Company Incorporated (Austral) and Nicklos Oil & Gas Company (Operator), *et al.* (Nicklos) in Docket Nos. G-20289 and G-20290, respectively,[1] on February 7, 1966, jointly filed an offer of settlement to resolve the conflicting interpretations of the tax reimbursement provisions in their rate schedules for jurisdictional sales of natural gas to Trunkline Gas Company (Trunkline) in Louisiana. In summary respondents propose (Austral under its FPC Gas Rate Schedule No. 13 and Nicklos under its FPC Gas Rate Schedule No. 2):

(1) A settlement tax reimbursement rate of 1.80 cents per Mcf, in lieu of 2.05 cents per Mcf, as the applicable Louisiana gas severance reimbursement for the subject sales;

(2) Agree to refund to Trunkline, with interest at six percent per annum, 0.15 cents per Mcf tax reimbursement for all gas previously delivered under said rate schedules for which Trunkline has paid tax reimbursement at the rate of 2.05 cents per Mcf. As a part of their settlement proposal, respondent Austral further agrees to move to dismiss its pending suit for declaratory judgment in the State of Louisiana; and

(3) Further agree to pay over to Trunkline, as soon as such amount can be determined, an additional amount equal to the difference between tax reimbursement at 1.80¢ per Mcf on gas delivered after approval of this settlement proposal and such lower tax reimbursement, if any, as is provided by any general rate settlement into which Austral or Nicklos enters or as is allowed by the Commission's final order in South Louisiana Area Rate Proceedings, Docket No. AR61-2, *et al.*, whichever shall first occur.

Respondents' offer of settlement is similar to Pan American Petroleum Corporation's offer of settlement with Trunkline which we accepted by order issued

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[1] Referred to jointly as respondents.

December 30, 1965 in Docket No. G–16492, *et al.*, 34 FPC 1612. No objection has been filed by interveners or other interested parties, and Trunkline has concurred in the settlement proposal.

We believe these proposals are consistent with the public interest and the provisions of the Natural Gas Act, and consequently shall approve the same. For the reasons set forth in the *Humble* order issued July 8, 1964, in Docket No. G–9287, *et al.*, 32 FPC 49, we will require Respondents to retain the refunds involved here.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Respondents' rates and rate schedules, their successors or assignees.

The Commission finds:

The proposed settlements of the subject proceedings on the bases described herein, as more fully set forth in the settlement proposal filed by Respondents as set forth above, are in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that they be approved and made effective as hereinafter ordered, and good cause exists for approving these settlements, for severing proceedings, for terminating Docket Nos. G–20289 and G–20290, and for providing for refunds.

The Commission orders:

(A) The offer of settlement filed with the Commission on February 7, 1966, by Respondents in Docket Nos. G–20289 and G–20290 is approved in accordance with provisions of this order.

(B) Respondents shall file, within 90 days from the date of issuance of this order, notices of change in rates under their applicable FPC Gas Rate Schedules to reflect the settlement rates applicable to severance tax reimbursement. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Respondents shall compute the amount of refund payable, together with interest at 6% per annum to the date of issuance of this order, for a 0.15¢ per Mcf tax reimbursement for all gas previously delivered to Trunkline under Austral's FPC Gas Rate Schedule No. 13 and Nicklos' FPC Gas Rate Schedule No. 2 for which Trunkline has paid tax reimbursement at the rate of 2.05¢ per Mcf; and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to Trunkline, setting out the amount of refund (showing separately the principal and applicable interest), the basis used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from Trunkline agreeing to the correctness of such amounts.

(D) Respondents shall retain these amounts of monies shown in the report required under Ordering Paragraph (C) above, subject to further order of the Commission.

(E) Respondents may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customer. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Respondents and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Respondents, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest or reinvest such deposits in any short-term indebtedness of the United States or any agency thereof, or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company will likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If Respondent elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention to do so within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that each of Respondents has complied with the terms and conditions of this order, the Section 4(e) proceeding in Docket Nos. G–20289 and G–20290 shall terminate, and said proceedings shall be severed from consolidated proceedings in Docket No. G–16492, *et al.*

(H) The Secretary of the Commission shall, by separate letter, direct Trunkline to report its plans for distribution of the refunds provided for herein. In the event that Trunkline states that it will flow-through the entire amount of refunds received, the Secretary of the Commission is authorized to release by his letter the refunds plus interest.

(I) The acceptance by the Commission of Respondents offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Respondents and is without prejudice to claims or contentions which may be made by Respondents, the Commission staff, or any affected party hereto, in any proceeding.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRUNKLINE GAS COMPANY, DOCKET NO. CP66-192

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 14, 1966)

On December 15, 1965, Trunkline Gas Company (Applicant) filed in Docket No. CP66-192 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers or other similar sellers thereof, as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally co-extensive with said system.

The total aggregate cost of such construction, to be financed from funds on hand, will not exceed $2,500,000 and the cost of any single project is to be limited to $500,000.

Due notice of the filing of the application was published in the Federal Register on December 30, 1965 (30 F.R. 16285). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas Company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued May 4, 1950, in Docket No. G-882 (9 FPC 721).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Trunkline Gas Company, to construct during the calendar year 1966 and operate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, only to take natural gas supplies from producers or other similar sellers thereof who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-147

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 14, 1966)

On November 10, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66-147 an application, as supplemented on December 13, 1965, and January 27, 1966, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of certain natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $4,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on March 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G-216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditure for facilities to be constructed thereunder should be limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, United Gas Pipe Line Company, to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 82

ORDER DISMISSING APPLICATION FOR REHEARING

(Issued March 15, 1966)

On February 21, 1966, Alabama Power Company (Alabama) filed its application for rehearing and reconsideration of the Commission order of January 20, 1966, 35 FPC 124, which deferred proceedings to determine the amount to be placed in an amortization reserve pursuant to Section 10(d) of the Federal Power Act (Act) until after a rulemaking proceeding with respect to computation of the net investment in the project (as defined in Section 3(13) of the Act) has been completed.

Alabama says this order deprives it of its right to a speedy determination, and casts uncertainty on its accounts and its financial statements, since $399,502.72 may have to be transferred to the amortization fund. Alabama adds that it has spent substantial sums on this proceeding and that it will lose these sums.

It was the Commission's review of matters brought out in the instant proceeding that led to the conclusion that further proceedings under Section 10(d) should be by-passed and that we should proceed directly to a rulemaking proceeding concerned with Section 3(13). The time and energy expended in this proceeding has led to clarification of the procedures to be followed in the future.

As to the death of the two accounting witnesses, Alabama will not be prejudiced if a determination in the present proceeding is postponed until after the rulemaking is concluded, as the testimony will still be available at that time. If some new and different proceeding should be instituted in which this testimony would be relevant, provision may be made for the use of the testimony in the new proceeding.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for reconsideration or rehearing filed by Alabama Power Company present no facts or legal principles which would warrant any change or modification in the Commission's order of January 20, 1966.

The Commission orders:

The application of Alabama Power Company for reconsideration or rehearing of the order of January 20, 1966, is hereby dismissed.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ESTABLISHMENT OF FEES TO BE PAID BY APPLICANTS FOR NATURAL GAS PIPELINE COMPANY CERTIFICATES AND OTHER AUTHORIZATIONS, DOCKET NO. R-282

ORDER NO. 317-A

CLARIFYING PART 159 OF THE REGULATIONS UNDER THE NATURAL GAS ACT

(Issued March 16, 1966) *

On January 5, 1966, the Commission issued Order No. 317, herein, establishing fees to be paid in connection with certain applications filed under the Natural Gas Act (35 FPC 30, 31 F.R. 430). Since that date it has been brought to our attention that several minor revisions would be desirable in the interest of clarity. First, the heading to § 159.1 is changed to make clear our original intention that all applications listed in the section, must be accompanied by the $50 filing fee, irrespective of whether or not they involve the construction, operation or acquisition of facilities and paragraph (d) is clarified. Second, we correct erroneous references to subsection 7(d) of the Act in § 159.1(f) and the first sentence of § 159.2. Third, § 159.2(c) is amended to fix the time for the payment of a fee, if one is required, in connection with an application to amend a pending application involving the construction, operation or acquisition of facilities and paragraph (e) is added to exempt applications involving facilities estimated to cost under $7,000. Fourth, § 159.3(c) is amended to exempt applications for extensions of the time limit in outstanding certificates for completing construction, making reports, etc., from the payment of any fee. Finally, a paragraph (d) is added to § 159.3 making it clear that fees are required in connection with applications for or to amend temporary certificates. Accordingly,

The Commission finds:

(1) In view of the minor clarifying nature of these amendments, compliance with the notice and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

(2) The amendments here prescribed are necessary and appropriate for the administration of the Natural Gas Act.

The Commission, acting pursuant to the authority set forth in Order No. 317, previously issued in this proceeding, *orders*:

(A) Effective February 6, 1966, the effective date of Order No. 317, Part 159, Subchapter E, Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations, is amended by amending the heading of § 159.1, both in the list of sections at the head of the part and in the section itself; by amending paragraphs (d) and (f) of § 159.1; by amending the first sentence and paragraph (c) of, and adding a paragraph (e) to, § 159.2; by amending paragraph (c) of, and adding a paragraph (d) to, § 159.3, all to read as follows:

Part 159 * * *

§ 159.1 Filing fee to accompany application.

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* Published in the Federal Register on March 24, 1966 (31 F.R. 4890).

§ 159.1 Filing fee to accompany application.

* * * * * * *

(d) Applications and petitions to intervene in which applicant or petitioner is requesting an order under section 7(a) of the Act.

* * * * * * *

(f) Applications for certificates of public convenience and necessity under sections 7 (c) and (e) of the Act.

* * * * * * *

§ 159.2 Applications involving construction or acquisition of facilities.

In addition to the fees prescribed by § 159.1, and except as provided in paragraph (e) of this section, applicants for a certificate of public convenience and necessity under sections 7(c) and (e) of the Act to construct and operate or acquire and operate facilities shall pay the following fees:

* * * * * * *

(c) If an amendment to a pending application increases the total estimated cost of construction of new facilities or of facilities to be acquired, an additional amount, computed with respect to the increase as provided in paragraph (a) of this section, shall accompany the filing of the amendment.

* * * * * * *

(e) No fee shall be required under this section where the estimated cost of the facilities to be constructed or acquired is less than $7,000.

§ 159.3 Miscellaneous.

* * * * * * *

(c) *Amendments to outstanding certificates.*—Excepting applications for extensions of time for which no fee will be required, applications to amend outstanding certificates, authorizations or orders, which have become final, will be treated as initial applications and the fees prescribed by this part will be charged.

(d) *Temporary certificates.*—Applications for temporary certificates, filed pursuant to § 157.17 of this subchapter, and not a part of an initial certificate application, or to amend outstanding temporary certificates will be treated as amendments to applications for the purposes of this part and a filing fee of $50 will be charged unless the request for temporary authority amends the original application to increase the estimated costs, in which case the provisions of § 159.2(c) will apply.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE ATLANTIC REFINING COMPANY, G-11034; CITIES SERVICE OIL COMPANY, G-11046; TIDEWATER OIL COMPANY, G-11049

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPPLEMENTS TO FPC GAS RATE SCHEDULES FOR FILING

(Issued March 17, 1966)

Each of the companies (Applicants) listed in the above-captioned proceedings has filed a petition to amend a certificate of public convenience and necessity authorizing the sale of natural gas to Tennessee Gas Transmission Company from acreage located in the East Cameron Block 88 Field, offshore

Louisiana. The Applicants seek to have the certificates amended so as to have included thereunder sales of natural gas from additional productive acreage in the area. The proposed sales price is 19.0 cents per Mcf at 15.025 psia.

Applicants are presently making sales from the originally dedicated acreage at 19.0 cents per Mcf which rate is being collected subject to refund in Docket Nos. (Cities) RI64–788, (Atlantic) RI64–809 and (Tidewater) RI65–15. The prior rate collected was 18.5 cents per Mcf.

The certificates issued to the Applicants were the subjects of the so-called *CATCO* proceedings which led to the Supreme Court's decision in *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 (1959). Subsequent to the Court's decision in the case the Commission issued an order, 28 FPC 1090, approving a settlement proposal and granting certificates to Applicants authorizing sales of natural gas to be made at 18.5 cents per Mcf, the price the Commission had previously found was the "in-line" price.

Under the terms of the settlement agreement Applicants, with respect to sales from the Cameron and West Delta acreage, were permitted to file for a 0.5 cent per Mcf increase to be effective on November 1, 1964. Filings for the increase have been made and the increase is being collected subject to refund.

While the added acreage here is being submitted for certification at a price one-half cent higher than the "in-line" price for the area we fixed in the *Union Texas* case, no evidence has been submitted to indicate that a higher "in-line" price is now applicable. We are of the opinion that, under the special circumstances of this case, permanent certification should be issued under the conditions now prevailing with respect to sales being made under the order issued December 21, 1962, 28 FPC 1090, approving settlement and issuing certificates. We will, therefore, issue permanent certificate authorizations to Applicants authorizing them to commence sales of natural gas from additional acreage at the rate of 19.0 cents per Mcf. The collection of such rate shall be made subject to the outcome of the suspension proceedings in Docket Nos. RI64–788, RI64–809 and RI65–15.

The basic contracts which would be supplemented to include additional acreage from which the sales would be made under the petitions to amend are the same contracts executed in 1956 which were the subject of the Supreme Court's opinion in the *CATCO* case. As has been indicated hereinbefore, upon remand of the *CATCO* proceedings, settlement of those proceedings was approved and an 18.5-cent per Mcf rate was permitted. In every decided "in-line" proceeding relating to initial sales from the offshore Louisiana since *CATCO* we have found the initial price required by the public convenience and necessity to be 18.5 cents per Mcf, *e.g.*, *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 32 FPC 254 (1964). In the absence of a record justifying an initial price higher than 18.5 cents per Mcf we are not inclined to grant permanent certificate authorizations in excess of that amount where no unusual conditions have been shown to exist.[1] Here we are dealing with a situation where in 1962 all parties agreed to a settlement which permitted Applicants to collect 18.5 cents per Mcf with the right to file for an increase to 19.0 cents per Mcf, which they have done. Thus, by amending the original certificates, while preserving the *status quo* we do not violate the in-line price for the area since the 19.0 cents price will be subject to refund in the same manner as is the price applicable to the basic acreage.

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[1] See *Hassie Hunt Trust, et al.*, Docket No. CI65–596, *et al.*, issued April 23, 1965, 33 FPC 866; *The California Company*, Docket No. CI65–560, issued November 19, 1965, 34 FPC 1335.

After due notice no petition to intervene, notice of intervention or protest to the granting of the petitions has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing certificates of public convenience and necessity in Docket Nos. G–11034, G–11046 and G–11049 should be amended as hereinafter ordered and the supplements to the related rate schedules should be accepted for filing.

The Commission orders:

(A) The order issuing certificates of public convenience and necessity to Applicants in Docket Nos. G–11034, G–11046 and G–11049 is amended by authorizing the sale of natural gas from additional acreage as hereinbefore described and as more fully described in the petitions herein, and in all other respects said order shall remain in full force and effect.

(B) The sales of natural gas authorized in paragraph (A) above shall be made at a total initial rate of 19.0 cents per Mcf at 15.025 psia subject to refund in Docket Nos. RI64–788, RI64–809 and RI65–15. The agreements and undertakings heretofore filed in said proceedings by Applicants shall be construed to assure the refunds of any amounts collected in excess of the amounts determined to be just and reasonable in said proceedings for sales of natural gas from the additional acreage.

(C) The supplements to the related rate schedules submitted by Applicants are accepted for filing effective on the date of initial delivery and are designated as Supplement No. 16 to The Atlantic Refining Company FPC Gas Rate Schedule No. 185, Supplement No. 17 to Cities Service Oil Company FPC Gas Rate Schedule No. 180 and Supplement No. 18 to Tidewater Oil Company FPC Gas Rate Schedule No. 72.

Commissioner O'Connor *concurs in the result* solely for the reason that the additional acreage being added by Applicants should, by virtue of the special circumstances presently prevailing in the South Louisiana pricing area, be subject to the same terms and conditions as are presently prescribed for the original certificates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP66–266

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1966)

On February 14, 1966, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP66–266 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the delivery of natural gas in interstate commerce on a short-term interruptible basis to Phillips Petroleum Company (Phillips), all as more fully set forth in the application.

Applicant proposes to construct and operate a meter station on its Fourway to Kit Carson 20-inch pipeline in Moore County, Texas, at a point of intersection with Phillips' 24-inch pipeline. The estimated cost of the proposed facilities is $24,300 which will be financed from current working funds.

Phillips has agreed to purchase from Applicant a minimum volume of 7,300,000 Mcf of gas at 14.65 psia during a period of one year beginning with the date of first delivery. Said minimum volume is to be delivered by Applicant and purchased by Phillips at a rate of not less than 15,000 Mcf per day. The maximum volume Applicant is obligated to deliver is 25,000 Mcf per day. All deliveries are interruptible at Applicant's discretion.

The gas purchased by Phillips will be used to help balance the gas supply and requirements for Phillips' West Panhandle system and thus, by displacement, will allow Phillips to discontinue curtailment of production of butadiene at its Plains Plant near Borger, Texas. Applicant presently has a gas supply in excess of its firm market requirements and states that the proposed sale will enable it to achieve a better balance between supply and requirements.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on March 17, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 4, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant and the transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate facilities and transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized herein shall be completed and placed in actual operation and the transportation of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one month from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-356; RED SNAPPER PIPE LINE COMPANY, DOCKET NO. CP66-168

ORDER DENYING PETITION FOR RECONSIDERATION AND MOTIONS TO DISMISS APPLICATION AND DISALLOW INTERVENTION

(Issued March 18, 1966)

Tennessee Gas Transmission Company (TGT) filed in the above-entitled proceeding a petition for reconsideration of the Commission's order issued January 14, 1966, 35 FPC 72, which granted a motion of Red Snapper Pipe Line Company (Red Snapper) requesting that its application in Docket No. CP66-168 be consolidated with TGT's application in Docket No. CP65-356. TGT on the same date also filed (1) a motion requesting dismissal of Red Snapper's application for failure to comply with Section 157.14 of the Commission's Regulations under the Natural Gas Act and (2) a motion to terminate Red Snapper's intervention in the consolidated proceedings in the event the motion to dismiss is granted.

Answers to TGT's motion were filed by Red Snapper and Consolidated Gas Supply Corporation, *et al.* on February 24 and March 1, 1966, respectively.

The gist of the various pleadings filed by TGT is set forth in its Motion to Dismiss wherein it alleges that Red Snapper has failed to comply with Section 157.14 of the Commission's Regulations under the Natural Gas Act requiring an applicant to show an adequate gas supply and a market which can reasonably be expected to absorb the gas to be transported or sold. TGT alleges further that failure to show a gas supply or markets leads to the conclusions that Red Snapper cannot meet the additional requirements of Section 157.14 of the Regulations pertaining to economic feasibility and financing.

If Red Snapper's application were a conventional type of certificate application whereby the natural-gas company proposes to produce or purchase natural gas for transportation or sale we might be constrained to agree with TGT and dismiss Red Snapper's application.

Here, however, we are dealing with a unique situation in which Red Snapper proposes to build an extensive offshore gathering and transmission system and transport gas for anyone seeking its service. This is the first of what is in the nature of a common-carrier application to come before us. The application, therefore, presents a case of first impression.

We have no intention of disregarding our Regulations insofar as they pertain to the conventional type of applications. It may be, however, that the Regulations as now written are not adequate or sufficiently broad to comprehend applications such as that filed by Red Snapper. We are of the opinion, however, that an application which encompasses the rendition of a type of service not heretofore proposed or considered should not be dismissed for failure technically to comply with our Regulations. It may be that the experience gained from the consolidated proceedings may aid us in the consideration of amendments to our Regulations to cover applications of the Red Snapper type.

We are not expressing an opinion that either or both the TGT and Red Snapper applications should upon completion of the consolidated proceedings or further proceedings, be granted. It may be that the record will indicate that they are not mutually exclusive and do not require comparative consideration. At this juncture, however, we are not prepared to say that one application must be considered as an alternative to the other or that the grant of one would necessarily preclude the grant of the other. In the light of these circumstances, the petition and motions of TGT will be denied.

The Commission orders:

The Petition for Reconsideration of Order Granting Motion to Consolidate, Motion to Dismiss Intervention and Motion to Dismiss filed in the above-styled proceedings by Tennessee Gas Transmission Company on February 10, 1966, are hereby dismissed.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-180

ORDER ISSUING TEMPORARY CERTIFICATE PRESCRIBING PROCEDURE AND SETTING DATE OF HEARING

(Issued March 18, 1966)

Tennessee Gas Transmission Company (Applicant) on December 3, 1965, filed, pursuant to subsections (b) and (c) of Section 7 of the Natural Gas Act an application for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities as described in the application.

The facilities for which Applicant seeks a certificate to construct and operate may be summarily described as follows:

262.37 miles of 36-inch loop line in Mississippi, Alabama, Tennessee, Kentucky, Ohio and Pennsylvania,

36.67 miles of 36-inch pipe between stations 527 and 524 in South Louisiana,

8.48 miles of 42-inch loop line in Kentucky,

60.16 miles of 30-inch loop line in Ohio, Pennsylvania and New York,

10.68 miles of 26-inch loop line in West Virginia,

22.61 miles of 20-inch pipeline lateral to the Grand Isle Block 43 Field,

4.07 miles of 8-inch and 2.57 miles of 6-inch pipeline replacing equivalent lengths of 4-inch and 3-inch lateral line in New England, and

21,500 additional compressor horsepower in seven existing compressor stations.

The facilities for which applicant seeks permission and approval to abandon may be summarily described as follows:

Scofield Bay Compressor Station No. 526A in Louisiana consisting of five 1,000 horsepower compressor units.

The application indicates that construction and operation of the proposed facilities will increase Applicant's average day system capacity from 3,027,000 Mcf to 3,203,000 Mcf or 176,000 Mcf per day. 111,891 Mcf of the added capacity would be utilized to increase deliveries to contract demand, general service and storage service customers. The remainder of the added capacity would substantially increase Applicant's so-called "unallocated capacity".

With respect to the facilities proposed to be abandoned the application states that Scofield Bay Compressor Station No. 526A is no longer needed to meet demands on this segment of Applicant's system.

The estimated cost of the facilities Applicant proposes is $82,465,000. Applicant proposes to finance such construction through the sale of First Mortgage Pipe Line Bonds, Debentures and Second Preferred Stock.

Notice of the filing of the application was issued on December 13, 1965. Such notice was published in the Federal Register on December 18, 1965 (30 F.R. 15684).

Petitions to intervene in the proceeding upon the application were filed by Consolidated Edison Company of New York, Inc., Consolidated Natural Gas Company System (Consolidated Gas Supply Corporation, The East Ohio Gas Company, Lake Shore Pipe Line Co. and The Peoples Natural Gas Company), Long Island Lighting Company, Orange and Rockland Utilities, Inc., Public Service Electric and Gas Company, The Columbia Gas System, Inc. (United Fuel Gas Company, The Manufacturers Light and Heat Company and The Ohio Fuel Gas Company) and Western Kentucky Gas Company. These parties desire to be heard only in the event a formal hearing is held in the proceeding. Petitions to intervene in opposition to the grant of the certificate in whole or in part have been filed by Louisville Gas and Electric Company (Louisville), Southern Natural Gas Company (Southern) and Chattanooga Gas Company (Chattanooga).

Southern and Chattanooga oppose the application because of its possible impact upon a comparative proceedings involving the two companies, among others, in which hearings have been held and concluded, an examiner's decision issued, exceptions filed and now pending before the Commission. Southern and Chattanooga contend that Applicant's application includes a request for authorization to construct and operate facilities which would be utilized to render the service which was at issue in the comparative proceedings. Louisville objects to the grant of the application because of its possible impact upon another proceeding wherein is involved the question of whether Louisville should in the future be served by a natural gas company other than Applicant, its present supplier.

On February 15, 1966, Applicant filed an application for a temporary certificate of public convenience to authorize it to construct and operate the facilities covered by the application filed in Docket No. CP66–180. As bases for its request for a temporary certificate Applicant alleges that during the latter part of the winter heating season it encountered a critical delivery situation requiring it to take emergency service from other pipeline companies to enable it to meet customer requirements and that it depleted its storage inventory to the extent that it had to take cushion gas from the storage field. Applicant alleges that lack of underground storage inventories has been the largest contributing factor to the emergency which it is currently experiencing. Applicant alleges that if it is to replenish its storage and have sufficient natural gas to meet its requirements during the winter heating season 1966–67 it must begin the construction of the facilities covered by the application, Docket No. CP66–180, not later than April 1, 1966. The application for temporary certificate was served by Applicant upon all parties who had filed petitions to intervene in the proceeding.

By notice of the Secretary issued February 23, 1966, all petitioners for leave to intervene were given until March 7, 1966, to file answers or protests to Applicant's request for a temporary certificate.

Answers were filed by Southern, Chattanooga, Louisville and Consolidated Natural Gas System companies. Southern and Chattanooga do not oppose the grant of a temporary certificate authorizing Applicant to *construct* the facilities. They do, however, oppose the grant of authorization to Applicant to *operate* any facilities which would have an effect upon the comparative proceedings hereinbefore mentioned. Consolidated Natural Gas System companies request that the Commission "promptly grant temporary certificate authorizing construction and operation of facilities required to service additional requirements of TGT's customers proposed herein". Louisville opposes the grant of the temporary certificate "until an adequate showing has been made to establish that all of the proposed facilities are needed" for the purpose of alleviating a genuine emergency.

We have considered the request for a temporary certificate and the answers made thereto. We are of the opinion that the public interest would be served by granting a temporary certificate authorizing it to *construct* the facilities covered by the application, Docket No. CP66-180. We will however, withhold the application insofar as it requests temporary authority to operate the facilities. We want to make it clearly evident, however, that the action we take in granting the temporary certificate shall not be construed as prejudicing the interest of any party to any proceeding now pending before the Commission in which hearings have been held or which may be the subject of a future hearing before the Commission. Further, the grant of the temporary certificate authorizing *construction* shall not be construed as determining that the application filed in Docket No. CP66-180 should be considered in connection with or as being related to any application which has been heard in the comparative hearing relating to service to Chattanooga. We are of the opinion the hearing to be held prior to final action on Applicant's application will afford Louisville the opportunity to demonstrate the validity of its contentions with respect to possible excess capacity in Applicant's system as a result of constructing the facilities proposed in the application filed in Docket No. CP66-180. If in fact unreasonable excess capacity is proved the cost of the excess facilities can be eliminated from Applicant's rate base until such time as the facilities usefulness can be shown.

Such reasonable conditions as may be required by the public convenience and necessity for the protection of the public interest can and will be considered when we take action with respect to temporary or permanent authorization to operate the facilities.

The Commission orders:

(A) A temporary certificate of public convenience and necessity is issued to Tennessee Gas Transmission Company authorizing it to construct the facilities covered by its application filed in Docket No. CP66-180.

(B) The grant of such temporary certificate is without prejudice to final action on the application.

(C) The temporary certificate is issued upon the express condition that the costs of any facilities not permanently certificated shall be removed from Applicant's rate base.

(D) Issuance of the temporary certificate herein is subject to the conditions in parts (a), (c)(1), (c)(2), (c)(3), and (c)(4) of Section 157.20 of the Commission's Regulations.

(E) Applicant and all interveners in support of the instant application will service their direct presentations, to be relied upon at the hearing, by April 4, 1966, upon the Commission, the Commission's staff, and upon all parties who have filed petitions to intervene.

(F) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held April 25, 1966, at 10:00 a.m. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., respecting the matters set forth in the instant order or any other order issued in the instant proceeding prior to said date of hearing.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

EQUITABLE GAS COMPANY, DOCKET NO. CP66-246

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FOR FILING REVISED TARIFF SHEETS

(Issued March 21, 1966)

On February 1, 1966, Equitable Gas Company (Applicant), filed in Docket No. CP66-246 an application together with a supplement thereto filed February 21, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery to Carnegie Natural Gas Company (Carnegie) of approximately 6,000 Mcf of gas per year from Applicant's Glover Lease located in Church District, Wetzel County, West Virginia, all as more fully set forth in the application.

Pursuant to an agreement between Applicant and Carnegie dated January 31, 1966, Applicant has agreed to sell and deliver to Carnegie all the gas produced from that certain oil and gas lease referred to as the Glover Lease located in Church District, Wetzel County, West Virginia. Applicant states that it is estimated that sales from wells located on said lease will not be in excess of 6,000 Mcf of gas per year.

Applicant states that the rate of twenty cents per Mcf will be charged for the proposed sale, as set forth in its W-2 Rate Schedule which is on file with the Commission.

Concurrently herewith Applicant filed its Fifth Revised Sheet No. 8, superseding its Fourth Revised Sheet No. 8 to its FPC Rate Schedule W-2, First Revised Volume No. 1.

No new facilities are required to effectuate Applicant's proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 17, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and supplement submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Equitable Gas Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 9, 1944, in Docket No. G-275 (4 FPC 558).

(2) The proposed sale and delivery of natural gas by Applicant to Carnegie, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that Applicant's superseding Revised Tariff Sheet No. 8 to its FPC Rate Schedule W-2 First Revised Volume No. 1 be accepted for filing effective on the date of issuance of this order.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas hereinbefore described, as more fully described in the application and supplement in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The service authorized shall be commenced as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) Applicant's Revised Tariff Sheet No. 8 to its FPC Rate Schedule W-2 First Revised Volume No. 1 is accepted for filing effective on the date of issuance of this order.

(E) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(G) The grant of the certificate issued herein is upon the condition that no increase in rate shall be filed prior to January 1, 1968, at any price which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy No. 61-1, as amended.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-202

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 21, 1966)

On December 20, 1965, Humble Gas Transmission Company (Applicant) filed in Docket No. CP66-202 an application, as supplemented on February 9, 1966, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities located near Baton Rouge, Louisiana, as more fully set forth in the application.

Specifically, Applicant proposes to abandon and remove the facilities which were originally installed to serve the following customers: (1) Kaiser Aluminum & Chemical Corporation (Kaiser Aluminum), (2) Ideal Cement Company (Ideal Cement), (3) Foster-Grant Company, Inc. (Foster-Grant), and (4) The Solvay Process Division, Allied Chemical & Dye Corporation (Solvay).

The facilities to be abandoned consist of approximately 0.8 mile of 6-inch to 10-inch lateral pipelines and related measuring facilities located on Applicant's jurisdictional Fowler-Baton Rouge pipeline system near Baton Rouge, Louisiana.

Applicant states that service to Kaiser Aluminum and Ideal Cement was discontinued from jurisdictional facilities on November 5, 1951. Since that date, service has been rendered from Applicant's nonjurisdictional intrastate Baton Rouge-West system.

Similarly, service to Foster-Grant through the jurisdictional facilities proposed to be abandoned was terminated on July 14, 1957, and service has been continued through Applicant's nonjurisdictional facilities.

Applicant served Solvay through facilities extending from the jurisdictional Fowler-Baton Rouge system until the end of 1965 when the service agreement with Solvay terminated by its own terms. Applicant will no longer render natural gas service to Solvay, and the facilities are no longer required.

Due notice of the filing of the application was published in the Federal Register on January 8, 1966 (31 F.R. 277). No protest, petition to intervene or notice of intervention has been filed.

At a hearing held on March 17, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Humble Gas Transmission Company, a Delaware corporation with its principal place of business in New Orleans, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 29, 1963, in Docket No. CP63-56 (29 FPC 162).

(2) The facilities to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding are granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

(C) The grant of authorization to abandon the facilities in paragraph (A) above should not be construed as precluding the imposition of sanctions or penalties for violations of the provisions of the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PLATEAU NATURAL GAS COMPANY, DOCKET NO. CP66-222; COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP66-236

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 21, 1966)

On January 11, 1966, Plateau Natural Gas Company (Plateau) filed in Docket No. CP66-222 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition from Colorado Interstate Gas Company and operation of nine natural gas sales meter and regulator stations located in Moore and Sherman Counties, Texas, as more fully set forth in the application.

On January 24, 1966, Colorado Interstate Gas Company (CIG) filed an application, as supplemented on February 14, 1966, in Docket No. CP66-236 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the transportation and sale of natural gas to Plateau for resale, as more fully set forth in the application.

Specifically, Plateau will purchase the nine sales meter and regulator stations to be abandoned by CIG. These stations have heretofore been utilized by CIG to serve irrigation customers along its Fourway-Kit Carson transmission pipeline in Moore and Sherman Counties, Texas, and are identified as follows:

Moore County
Gaston Wells
Arvel Perky
Roy Carroll
Carroll and Taylor
A. J. Harris

Sherman County
B. A. Donelson
B. A. Donelson
Horace D. Sneed
Melvin Phillips

Plateau will continue the service to the irrigation customers with natural gas to be purchased from CIG under CIG's FPC Rate Schedule G-1.

Plateau estimates that its third year peak day and annual requirements to serve the irrigation customers will be 810 Mcf and 94,500 Mcf, respectively.

Plateau will purchase the stations from CIG at their net book value on the first day of the month in which the purchase is made, pursuant to the terms of the agreement between the parties dated November 26, 1965. The book value of the facilities as of October 31, 1965, was $14,073. Plateau will pay for the facilities from cash on hand.

The proposal will result in a reduction in the cost of gas to the irrigation customers. No service will be abandoned.

CIG also requests permission and approval of the abandonment of its South Keyes pipeline lateral which consists of approximately three miles of 4-inch pipeline in Cimarron County, Oklahoma. CIG states that due to changed field operating conditions natural gas from the Keyes Field is now gathered and compressed at the Keyes Compressor Station prior to entering the main transmission pipeline, and the South Keyes lateral is no longer required. CIG will salvage these facilities for possible use on its gas gathering system.

Notices of the filing of the applications by CIG and by Plateau were published in the Federal Register on February 9, 1966, and January 22, 1966, respectively (31 F.R. 922 and 2559). No protest, petition to intervene or notice of intervention has been filed in these proceedings.

At a hearing held on March 17, 1966, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Plateau Natural Gas Company, a Colorado corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 25, 1966, in Docket No. CP66-154 (35 FPC 153).

(2) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(3) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in Docket No. CP66-236, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The abandonment hereinbefore described, as more fully described in the application in Docket No. CP66-236, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(5) The facilities to be sold and acquired as hereinbefore described in the applications in these proceedings are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof by Plateau and the transportation and sale of natural gas by CIG are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) CIG and Plateau are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The acquisition and operation of the proposed facilities by Plateau and the transportation and sale of natural gas by CIG are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(8) Public convenience and necessity require that the certificates hereinafter issued and the rights granted thereunder be conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly Plateau's compliance with paragraphs (a), (b), (d)(2), (d)(3) and (e) of Section 157.20, and CIG's compliance with paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Plateau Natural Gas Company authorizing the acquisition and operation of the facilities and the transportation of natural gas as hereinbefore described and as more fully set forth in the application in Docket No. CP66–222, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued to Colorado Interstate Gas Company authorizing the transportation and sale of natural gas to Plateau Natural Gas Company for resale, as hereinbefore described and as more fully described in the applications in these proceedings, upon the terms and conditions of this order.

(C) Permission for and approval of the abandonment by Colorado Interstate Gas Company of the facilities hereinbefore described, as more fully described in the application in Docket No. CP66–236, are granted.

(D) Colorado Interstate Gas Company shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

(E) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Plateau Natural Gas Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(F) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Colorado Interstate Gas Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

(G) The facilities authorized to be acquired by paragraph (A) above shall be acquired and placed in actual operation and the transportation and sale of natural gas authorized by paragraph (B) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION, DOCKET NO. E–7188

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued March 21, 1966)

Pursuant to Section 5 of the Flood Control Act of 1944 (59 Stat. 887), the Secretary of the Interior, on behalf of the Southeastern Power Administration (SEPA) on October 12, 1965 filed with the Federal Power Commission a request for confirmation and approval of Wholesale Power Rate Schedules

CR–1–A and CR–2, applicable to the power marketed from the Cumberland River Power System, consisting of six hydroelectric projects. The Cumberland River Power System now includes the Barkley Project with the five Cumberland Projects already in commercial operation. Rate Schedule CR–1–A encompasses and supersedes Wholesale Power Rate Schedule CR–1, now applicable to the sale of power from the Dale Hollow, Center Hill, Wolf Creek, Old Hickory and Cheatham Projects, which was approved by the Commission on December 23, 1964, in Docket No. E–7188, 32 FPC 1523. Rate Schedule CR–2 covers the sale of peaking and standby power from the system to Big Rivers Rural Electric Cooperative Corporation.

Wholesale Power Rate Schedule CR–1–A parallels the format of Rate Schedule CR–1, which it is designed to supersede. The former rate schedule differs from Rate Schedule CR–1 only in that it provides for the sale of the output of Barkley to the Tennessee Valley Authority (TVA) as well as the output of the other five plants and contains a list of credits which are to be used to adjust the annual charge to compensate for the retention of peaking power (up to 150,000 kilowatts) and standby power (up to 100,000 kilowatts) by SEPA and the transfer of retained power and energy for sale by SEPA to other customers—at present Big Rivers Rural Electric Cooperative Corporation (Big Rivers)—under terms of Rate Schedule CR–2.

SEPA proposes to sell the output of Barkley to TVA for an average annual charge of $2.2 million. With the addition of the revenue from Barkley, SEPA estimates the average annual revenue to be received for the sale of power generated at the six projects to be $8.7 million.

Wholesale Power Rate Schedule CR–2 is a new rate schedule available to Big Rivers, which applies to the sale to Big Rivers of peaking power (up to 40,000 kilowatts of capacity with 1,500 hours use per year) and standby power (up to 100,000 kilowatts of capacity with associated energy), generated at the six plants of the Cumberland River System. Rates for the sale of this power are balanced by the credits allowed to TVA in Rate Schedule CR–1–A except for peaking capacity rates. In this case, with 1,500 hours use, there is a differential of $0.35 per kilowatt in favor of SEPA, which amounts to an additional $14,000 a year for 40,000 kilowatts over what SEPA would receive from TVA. By selling the entire 150,000 kilowatts of peaking capacity which SEPA may retain to others under the same terms as those in its contract with Big Rivers, SEPA has the possibility of increasing its revenues over sales to TVA by $52,500 a year.

In support of its proposed rate schedules, SEPA filed a repayment study which indicates that the proposed rates will produce sufficient revenues to recover all costs of production and transmission of power generated by the 6-project Cumberland River System in the 49th year after the Barkley project becomes fully operative. In making its computations, SEPA has computed interest at 2.5 percent on investments in power at Cheatham, Old Hickory, and Barkley, and also at Wolf Creek, Dale Hollow, and Center Hill subsequent to June 30, 1964. Moreover, as agreed in an exchange of letters between the Commission and Interior in October and November 1964, provision is made to apply the 2.5 percent retroactively to the three latter projects in place of the 2.0 percent rate used by Interior prior to July 1, 1964.

The allocations of project costs pertaining to all projects, as used by SEPA have been approved by the Corps of Engineers and, with the exception of the allocation of Barkley costs, have been adopted by the Chief of Engineers. In the case of Barkley, a letter from the Office, Chief of Engineers is to the effect that the costs finally allocated to power will be practically the same as those used by SEPA.

Actual cost and revenue figures are available from fiscal year 1949 through fiscal year 1964, a period of construction and development. These figures show that, at the end of fiscal year 1964, $153,942,050 had been invested in Cumberland River projects of which $24,742,337 has been repaid.

A review of the information filed by Interior in support of proposed Wholesale Power Rate Schedules CR-1-A and CR-2 shows that the anticipated revenues would be sufficient to repay the capital investment in the six Cumberland River projects with interest at 2.5 percent in a reasonable period of years, namely 49 years, following full commercial operation of the Barkley project. The addition of Wholesale Power Rate Schedule CR-2 and the changes proposed in Rate Schedule CR-1-A would make possible a more widespread use of the power produced at the projects in the Cumberland River Power System than heretofore and would provide an opportunity for additional income beyond that relied upon by SEPA in its repayment study.

SEPA's contracts with both TVA and Big Rivers provide for periodic review and adjustment of rates and charges at 5-year intervals, with the change in rates not to become effective unless and until confirmed and approved by the Commission.

SEPA's contract with Big Rivers stipulates that rates and charges shall be subject to adjustment on July 1, 1968, and thereafter at 5-year intervals. Accordingly our confirmation and approval will terminate June 30, 1968.

The Commission finds:

The proposed rates and charges of SEPA for the wholesale sale of electric power and energy from the Wolf Creek, Dale Hollow, Center Hill, Cheatham, Old Hickory and Barkley projects, as set forth in Wholesale Power Rate Schedules CR-1-A and CR-2, referred to above, for a period beginning with the date of the issuance of this order and terminating June 30, 1968 will not be inconsistent with the provisions of the Flood Control Act of 1944.

The Commission orders:

The proposed rates and charges for wholesale sale by SEPA of electric power and energy from the Wolf Creek, Dale Hollow, Center Hill, Cheatham, Old Hickory and Barkley projects, as set forth in Wholesale Power Rate Schedules CR-1-A and CR-2, are hereby confirmed and approved for a period beginning with the date of issuance of this order and ending June 30, 1968.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, RP65-49; UNITED FUEL GAS COMPANY, RP66-2; COLUMBIA GULF TRANSMISSION COMPANY, RP66-22

ORDER INSTITUTING INVESTIGATION, PROVIDING FOR HEARING, CONSOLIDATING PROCEEDINGS AND PERMITTING INTERVENTIONS

(Issued March 22, 1966)

United Fuel Gas Company (United Fuel) on July 20, 1965, tendered for filing Sixth Revised Volume No. 1 to its FPC Gas Tariff which became effective subject to hearing and refund order issued September 14, 1965, in Docket No. RP66-2. The revised tariff proposes basic changes in rates, changes, and classifications of service, which include a new winter service rate schedule and substantially alter the level of demand and commodity charges for service under the CDS Rate Schedule.

In support of the proposed filing, United Fuel filed the material required by Section 154.63 of the Commission's Regulations, reflecting its sales and operations during the test year ending May 31, 1965. Included among the costs claimed in United Fuel's cost of service is the adjusted amount of $45,644,943 for transportation of gas purchased by United Fuel in the State of Louisiana to United Fuel's facilities in Eastern Kentucky. These claimed transportation costs represent charges for such service rendered by Columbia Gulf Transmission Company (Columbia Gulf), an affiliate of United Fuel in the Columbia Gas System. This transportation service is rendered by Columbia Gulf pursuant to a cost-of-service form of rate (Rate Schedule T-1) contained in its FPC Gas Tariff, Original Volume No. 1.[1]

Review of Columbia Gulf's charges as set forth in the material submitted by United Fuel, indicates that those charges are based, in part, on items in issue and subject to investigation and hearing in the *Seaboard* and-*United Fuel* proceedings listed above. Among these issues are: (1) the use of straight-line depreciation instead of liberalized depreciation for tax purposes; (2) the inclusion of accumulated deferred taxes at 1.5 percent in the cost of capital computations of rate of return; (3) the use of a 6.5 percent rate of return; (4) the percentage of tax saving to be used in determining the effective rate; and (5) the propriety of the depreciation rates and depreciation expenses claimed.

Under the circumstances, it appears appropriate to institute an investigation into the lawfulness of Columbia Gulf's rates and charges and to consolidate such proceeding with the proceedings in *Seaboard* and *United Fuel* listed above.

In order to obviate filing of unnecessary petitions, we find it in the public interest, pursuant to our authority under Section 15(a) of the Act, to grant leave to intervene in the Columbia Gulf proceeding to all parties who have been allowed to intervene in the *Seaboard* and *United Fuel* proceedings.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by Columbia Gulf for or in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or contracts affecting such rates, charges or classifications.

The Commission orders:

(A) Under the authority of the Natural Gas Act, particularly Sections 4(a) and (b), 5, 9, 10, 14, 15, and 16, an investigation of Columbia Gulf is hereby instituted, and a public hearing is hereby provided, for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Columbia Gulf, any of the rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges or classifications, are unjust, unreasonable, unduly discriminatory, or preferential.

(B) The proceedings hereby instituted (Docket No. RP66-22) are hereby consolidated with the proceedings in Docket Nos. RP65-49 and RP66-2 for the purposes of public hearings and decision on the matters and issues involved therein.

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[1] Columbia Gulf's FPC Gas Tariff, Original Volume No. 1, was initially accepted for filing and permitted to become effective as of January 1, 1959, by order issued February 12, 1959.

(C) Columbia Gulf, the Commission staff and interveners shall serve their direct testimony and exhibits in the Columbia Gulf proceeding upon the Presiding Examiner and all other parties as follows: (1) the Commission staff on or before April 22, 1966; (2) Columbia Gulf on or before May 6, 1966; and (3) the interveners on or before May 17, 1966.

(D) Each party which has been permitted to intervene in the proceedings in Docket Nos. RP65-49 and RP66-2, is hereby permitted to intervene in Docket No. RP66-22, subject to the rules and regulations of the Commission and subject to the provisions of our orders granting such prior interventions.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NAFCO OIL AND GAS INC., DOCKET NO. RI66-249

ORDER ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued March 22, 1966)

On February 24, 1966, Nafco Oil and Gas Inc. (Nafco) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sales of natural gas to Tennessee Gas Transmission Company (TGT) by Nafco made under Supplement No. 8 to Nafco's FPC Gas Rate Schedule No. 7 in Panola County, Texas (Texas R.R. Com. District #6). The proposed increased rate was suspended by order of the Commission for the statutory period in Docket No. RI66-249, and has not been made effective.

Under the terms of the offer, Nafco proposes to eliminate the price escalation provisions from the rate schedule and to establish a 15¢ per Mcf rate at 14.65 psia, subject to downward Btu adjustment, for the subject sale. The notice of change containing the proposed 15¢ per Mcf rate is designated as Supplement No. 9 to Nafco's FPC Gas Rate Schedule No. 7. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Nafco's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Nafco's rate and rate schedule.

The Commission finds:

The proposed settlement by Nafco of the above-designated proceeding on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Nafco on February 24, 1966, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Nafco on February 24, 1966, is hereby approved in accordance with the provisions of this order.

(B) Nafco shall file, within 30 days from the date of issuance of this order, an executed contract amendment as specified in its offer of settlement, to its FPC Gas Rate Schedule No. 7 eliminating the price escalation provisions therefrom. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Nafco has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, subject to downward Btu adjustment, contained in Supplement No. 9 to its FPC Gas Rate Schedule No. 7 shall be effective as of the date of issuance of this order, the above designated proceeding shall be deemed terminated, and Supplement No. 8 to its FPC Gas Rate Schedule No. 7 shall be deemed withdrawn.

(D) The acceptance by the Commission of Nafco's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Nafco, including area rate or other similar proceedings.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, DOCKET NO. AR61-1; PHILLIPS PETROLEUM COMPANY, DOCKET NO. G-20405

DECLARATORY ORDER WITH RESPECT TO QUALITY STATEMENT

(Issued March 23, 1966)

Phillips Petroleum Company (Phillips), a respondent in the *Permian* case, submitted on March 9, 1966, in purported compliance with paragraph (F) (1) of Opinion No. 468, as amended by Opinion No. 468-A, 34 FPC 159, 1068, a quality statement with respect to the sale of "old" gas-well gas to El Paso Natural Gas Company (El Paso) from the Crosby Devonian Field, Lea County, New Mexico under Phillips' FPC Gas Rate Schedule No. 274 which is involved in Docket No. G-20405. The quality statement, which was signed by both Phillips and El Paso, shows a deduction of .32¢ per Mcf for total sulphur content (2480 grains per Mcf) and water content in excess of .009 pounds. It also shows an offsetting credit of .21¢ because the gas is delivered at a pressure in excess of 500 psig (actual delivery pressure is 550 psig) together with an unspecified credit for Btu content above 1,000 Btu (actual Btu content is 1,030 Btu per cubic foot). The credits are utilized only to offset the deduction for sulphur and water content. Phillips thus proposes to establish a total rate of 14.44¢ per Mcf (13.5¢ plus .94¢ tax) which is the applicable area *base* rate ceiling determined in Opinion No. 468.

Our Permian decision does not permit under any circumstances upward adjustments for gas delivered at pressures in excess of 500 psig[1] or for Btu content between 1000 and 1050 in determining the applicable area rate. It thus makes no difference whether such upward adjustments are proposed to offset downward quality adjustments or to establish the just and reasonable rate above the area base rate ceiling. Item 6F (with respect to delivery pressure) and Item 6G (with respect to Btu content) in the quality statement submitted by Phillips are therefore both incorrect as are the instructions relating thereto which are included on the reverse side of the quality statement.[2]

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[1] Order issued February 2, 1966, 35 FPC 175, in *Area Rate Proceeding*, Docket No. AR61-1, involving a quality statement tendered by Monsanto Company. See also Opinion No. 484 issued January 6, 1966, *El Paso Natural Gas Company, et al.*, Docket No. CP64-211, *et al.*, 35 FPC 40.

Examination has not yet been completed with respect to the propriety of the deduction for sulphur and water content or the computation of taxes made in the subject quality statement. In our future determination as to whether Phillips' quality statement is otherwise acceptable, no consideration will be given to the proposed credits for pressure and Btu content.

The Commission orders:

For the reasons set forth above, no consideration will be given to the credits for pressure and Btu content proposed in the quality statement tendered by Phillips on March 9, 1966, with respect to sales under its FPC Gas Rate Schedule No. 274 in determining at a later date whether such quality statement is otherwise acceptable.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IDAHO POWER COMPANY, DOCKET NO. E-7270

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued March 25, 1966)

Idaho Power Company (Applicant), incorporated under the laws of the State of Maine and qualified to do business in the States of Idaho, Nevada and Oregon, with its principal business office at Boise, Idaho, filed an application with the Federal Power Commission on February 14, 1966, for authorization pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $20,000,000, principal amount of First Mortgage Bonds, due 1996.

Applicant proposes to issue the new Bonds as a series of an issue of First Mortgage Bonds under a Mortgage and Deed of Trust dated as of October 1, 1937, and as supplemented and amended by 15 supplemental indentures and as to be further amended by a 16th supplemental indenture to be dated as of April 1, 1966 between the Applicant and Bankers Trust Company of New York and J. C. Kennedy, as Trustees. The new Bonds are to be dated as of April 1, 1966. The interest rate of the Bonds will be determined by competitive bidding.

On or about April 4, 1966, the Applicant proposes to invite sealed written bids for the purchase of the Bonds by newspaper publication of a public invitation for proposals, setting forth terms and conditions relating thereto. All bids, whether from a single bidder or group of bidders, must be in writing on the Form of Bid furnished by Applicant and must be for the purchase of the entire amount of the Bonds. Each bid must specify, among other things: (1) the interest rate to be borne by the Bonds, which rate shall be a multiple of ⅛ of 1% and (2) the price to be paid to the Applicant, which price shall not be less than 99% of principal amount. Each bid shall provide that accrued interest from April 1, 1966 to date of payment therefor and delivery thereof will be paid to the Applicant by the purchaser or purchasers.

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[2] Phillips used its own form rather than the form provided by the Commission.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds must be delivered to the Applicant's representative at the Bankers Trust Company, 11th Floor, 100 Broadway, New York, New York, before 11:30 a.m. New York time on April 12, 1966, and be accompanied by the deposit of $600,000. Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the invitation, it will accept the bid which provides for the lowest cost of money.

Applicant states that the proceeds obtained from the proposed issuance of Bonds will be utilized to pay off Applicant's outstanding short-term notes in the amount of $14,100,000 and for partial payment of the Applicant's 1966 construction program which is estimated at $49,154,000. Principal items in the construction program include $29 million for generating facilities at Hells Canyon, $7.8 million for transmission lines and $7.6 million for distribution and substation facilities.

Written notice of the application has been given to the Idaho Public Utilities Commission, Nevada Public Service Commission, Oregon Public Utility Commissioner and the Governor of each of those states. Notice has also been given by publication in the Federal Register on March 2, 1966 (31 F.R. 3316), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before March 10, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1957, *Idaho Power Company*, Docket No. E-6781 (18 FPC 603).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IOWA ELECTRIC LIGHT AND POWER COMPANY, DOCKET NO. E-7269

ORDER AUTHORIZING ISSUANCE OF SHORT-TERM NOTES

(Issued March 25, 1966)

Iowa Electric Light and Power Company (Applicant), filed an application with the Federal Power Commission on February 14, 1966, seeking an order pursuant to Section 204 of the Federal Power Act for authority to issue Short-term Promissory Notes in the aggregate principal amount of not in excess of $18,000,000.

Applicant is organized under the laws of the State of Iowa and is engaged primarily in the electric and natural gas utility business in Iowa and is authorized to transact business in the States of Minnesota, Colorado and Nebraska. Electric service is supplied at retail to 271 incorporated cities and towns and 111 unincorporated communities in 51 counties in the State of Iowa.

According to the application, Applicant proposes to issue up to but not more than $18,000,000 in Promissory Notes payable to the First National Bank of Chicago, the Northern Trust Company of Chicago and to other banks. The Notes are to be issued either originally or upon renewal from time to time as the need for funds arises and they are to have maturity dates not in excess of one year from the date of issuance, with all notes maturing on or before December 31, 1967. The Notes are to bear interest at the prime rate in effect on the date of issuance.

The Applicant represents that the Notes are to be issued to renew presently outstanding Notes which total $5.4 million and are to furnish a portion of the funds for its 1966 construction program which has an estimated cost of $23,514,000. The largest item in the Applicant's construction program, the installation of a 140,000 kw generating unit at its Prairie Creek Plant in Cedar Rapids, Iowa, will require $11.9 million in 1966 and $18.5 million overall. The Applicant states that it plans to redeem all of the notes from the sale of long-term debt securities to be marketed in 1966.

Written notice of the application has been given to the Iowa Public Service Commission, Minnesota Public Service Commission, Colorado Public Service Commission, Nebraska Public Service Commission and the Governor of each of those states. Notice has also been given by publication in the Federal Register on March 4, 1966 (31 F.R. 3435), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before March 18, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the States of Wisconsin, Illinois and South Dakota and consumed in the State of Iowa, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant, therefore, is a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonable necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said notes being not later than December 31, 1967.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MIDWESTERN GAS TRANSMISSION COMPANY,
DOCKET NOS. CP66-172, CP66-173, CP66-174

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER AUTHORIZING THE IMPORTATION OF NATURAL GAS

(Issued March 25, 1966)

On December 2, 1965, Midwestern Gas Transmission Company (Applicant), filed in Docket No. CP66-172 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to customers located on its northern system on an interruptible basis for a temporary term commencing upon receipt of authorization and terminating on October 31, 1966. Applicant proposes to purchase the gas from Trans-Canada Pipe Lines Limited (Trans-Canada) at the existing point of interconnection of the two systems on the International Boundary between the United States and Canada, near Emerson, Manitoba. Applicant also filed on December 2, 1965, an application pursuant to Section 3 of the Natural Gas Act in Docket No. CP66-173, requesting an order of the Commission authorizing Applicant to import additional volumes of natural gas from Canada into the United States.[1] The proposals involved are more fully set forth in the aforementioned applications.

Applicant has entered into a precedent Agreement with Trans-Canada dated November 22, 1965, which contemplates the purchase of up to 25,000 Mcf of natural gas per day from Trans-Canada when Trans-Canada has such gas available for sale. The purchases from Trans-Canada will be made only when Applicant has corresponding requests from existing customers on its northern system to purchase this gas. The only purchases by Applicant from Trans-Canada contemplated by the instant applications are those for equivalent volumes to be sold by Applicant to its existing northern system customers who desire to purchase same under Applicant's proposed new Rate Schedule TGS-2, at a rate of 31.4¢ per Mcf.

Trans-Canada has advised Applicant that approximately 8 million Mcf of gas will be available for import during the temporary period ending October 31, 1966, and that of this quantity approximately 1.5 million Mcf should be available during the months of January, February and March.

Applicant's northern system facilities were authorized by order of the Commission on October 31, 1959, issued in Docket No. G-18313, *et al.* (Opinion No. 331, 22 FPC 775), which order authorized Applicant to import from Canada a maximum daily quantity of 204,000 Mcf of gas (Docket No. G-18314) and granted Applicant a Presidential Permit for the construction, operation and maintenance of facilities for the importation of natural gas (Docket No. G-18315). On August 10, 1965, by order issued in Docket No. CP64-308, *et al.* (Opinion No. 469) Applicant was authorized to import from Canada into the United States a maximum of 222,360 Mcf of gas per day, an increase of 18,360 Mcf over the aforementioned authorization issued in Docket No. G-18314.

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[1] Treated herein as an application to further amend paragraph (M) of the Commission's order issued October 31, 1959 (22 FPC 775, 803 in Docket No. G-18313, *et al.*); amended in Docket No. CP64-308, *et al.*, on August 10, 1965, 34 FPC 457.

The importation and sale of natural gas on an interruptible basis as proposed by the instant applications would be made by means of the aforementioned existing facilities and no additional facilities are required.

The proposed TGS-2 service will be supplied in addition to the existing interruptible service under Rate Schedule I-2 now provided on Applicant's Northern System at 24.92 cents per Mcf. Applicant's CR-2 and CRL-2 customers will first pay for their interruptible gas at 24.92 cents per Mcf and then their allocated TGS-2 gas at 31.4 cents per Mcf. Applicant's CD-2 customer must first take its contract demand volumes plus an additional 2% allowable variation volume of gas @ 37.9 cents per Mcf prior to receiving gas under Rate Schedule I-2 or IGS-2. To insure that Applicant will not bill its customers for a greater volume of gas under the proposed Rate Schedule TGS-2 than it imports from Trans-Canada, Applicant has agreed in writing that "During the term of the certificate issued in Docket No. CP66-172, *et al.*, it agrees to balance, as closely as possible, the billings of its customers under Rate Schedule TGS-2 with the purchases of surplus interruptible gas from Trans-Canada, priced at 24 cents per Mcf, which are in excess of the presently authorized firm contract demand quantity".

As noted hereinbefore Applicant requested authorization in Docket No. CP66-173 to import 25,000 Mcf of natural gas per day from Trans-Canada when Trans-Canada has such gas available, such purchases to be made by Applicant, only when it has corresponding requests from existing customers on its northern system to purchase this gas. The allied request in Docket No. CP66-174 for a Presidential Permit to operate and maintain the facilities at the International Boundary required for importation, was returned to Applicant on December 13, 1965, for the reason that a new permit or an amendment to existing permit is not required when an Applicant presently authorized to import natural gas merely requests authorization to import additional volumes at the existing point of connection, without change in or construction of new facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 12, 1959, in Docket No. G-16841 (21 FPC 653, 663).

(2) The proposed sale and delivery of natural gas, as hereinbefore described and as more fully described in the application, in Docket No. CP66-172 in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas to be effective as of the date of issuance of this order are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP66-172 and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that certain conditions relating to the proposed Temporary Gas Service (TGS-2) be attached to the Commission's order in Docket No. CP66-172 authorizing the proposed service, and as related hereinbefore.

(7) It is further necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Paragraph M of the Commission's order issued October 31, 1959 (22 FPC 775, 803) in Docket No. G-18313, *et al.*, be further amended so as to authorize Applicant to import up to 25,000 Mcf of natural gas per day from Trans-Canada, as proposed in the application filed herein in Docket No. CP66-173, for transportation and resale to its customers on its Northern System on an interruptible basis as proposed.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Midwestern Gas Transmission Company in Docket No. CP66-172 authorizing as of the date of issuance of this order the sale and delivery of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The Applicant shall file within 15 days from the date of issuance of this order the Temporary Gas Service Rate Schedule in the form submitted in Exhibit P to its application filed in Docket No. CP66-172 and served on its customers. Good cause exists for permitting such rate schedule to be effective as of the date of issuance of this order.

(D) The certificate issued by Paragraph (A) above is expressly conditioned on Applicant (1) limiting its operation of its Northern System to a maximum of 877 psig with existing facilities; and (2) during the term of the certificate issued balancing to the closest possible extent the billings of its customers under Rate Schedule TGS-2 with the purchases of surplus interruptible gas from Trans-Canada as proposed in the application filed in Docket No. CP66-172, which are in excess of the presently authorized firm contract demand quantity.

(E) Paragraph (M) of the Commission's order issued October 31, 1959, in Docket No. G-18313, *et al.*, amended by order issued on August 10, 1965, in Docket No. CP64-308, *et al.*, is further amended so as to authorize Applicant to import up to 25,000 Mcf of natural gas daily from Trans-Canada, as proposed in the application filed in Docket No. CP66-173.

(F) In all other respects the terms, conditions and authorizations set forth in the Commission's order issued October 31, 1959, as amended on August 10, 1965, shall remain in full force and effect, and the grant of the instant authorization, together with the exercise of the rights therein granted, shall be fully subject thereto.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, AR61-1; CLAUDE E. AIKMAN, ET AL., G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60-435, ET AL.

ORDER REJECTING PETITION TO REOPEN PROCEEDING

(Issued March 28, 1966)

On August 5, 1965, we issued Opinion No. 468, 34 FPC 159, in this proceeding establishing just and reasonable rates for producer sales in the Permian Basin area. On September 3, 1965, Hunt Oil Company, *et al.*, filed an application for rehearing of our order and requested reopening of the proceeding to adduce additional evidence which allegedly would demonstrate the invalidity of our order. The proposed evidence included exhibits refused admission in evidence pursuant to orders of the Commission; a recasting of evidence currently in the record; and the presentation of new evidence. In Opinion No. 468-A, 34 FPC 1068, we denied the applications for rehearing and the motion to reopen the proceeding for receipt of additional evidence. See *I.C.C.* v. *Jersey City*, 322 U.S. 503, 514 (1944).

On October 21, 1965, Hunt Oil Company, *et al.*,[1] filed another petition to reopen the Permian Basin proceedings for receipt of additional evidence.[2] In that petition, Hunt again requests the opportunity to recast some portions of the record, update the record and present additional evidence. Hunt asserts that the studies, which are detailed to a somewhat greater extent than in its petition for rehearing, would demonstrate the invalidity of our decision in that proceeding and should have been considered prior to court review thereof.

It is apparent that Hunt's October 21 filing constitutes a second application for rehearing of Opinion No. 468.[3] Neither the Natural Gas Act nor our Rules of Practice and Procedure authorize such a filing. While Hunt asserts that some of the new material would be based upon pleadings introduced in other Commission proceedings after it filed its petition for rehearing, it is clear that none of it relies on facts not available to Hunt at the time it filed its petition for rehearing. In short there is even less reason for setting aside our decision in this most fully adjudicated of cases than existed in the situation presented in the *Jersey City* case *supra*. The petitions should therefore be rejected.

The Commission orders:

The document designated as a petition to reopen proceedings for receipt of evidence filed by Hunt Oil Company, *et al.*, is hereby rejected.

Chairman White and Commissioner Bagge *not participating.*

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[1] H. L. Hunt, Lamar Hunt, N. B. Hunt, W. H. Hunt, Secure Trusts, Caroline Hunt and Loyd B. Sands, Caroline Hunt Trust Estate, (Lyda Hunt-Caroline Trusts, Lyda Hunt-Bunker Trusts, Lyda Hunt-Lamar Trusts, Lyda Hunt-Herbert Trusts, Lyda Hunt-Margaret Trusts, formerly estate of Lyda Bunker Hunt, deceased; Hunt Industries (formerly estate of Lyda Bunker Hunt, deceased) Placid Oil Company.

[2] On November 1, 1965, Perry R. Bass, (Operator), *et al.*, joined in and adopted that petition.

[3] Hunt asserts that the petition to reopen was filed under Section 1.33 of the Commission's Rules of Practice and Procedure. But this Rule is expressly applicable only before a Commission decision has been issued. See § 1.33(c). Hunt's petition to reopen is directed to the same issues raised in its application for rehearing and not to any modifications made by our order on rehearing, Opinion No. 468-A.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

VILLAGE OF BELLE RIVE, ILLINOIS AND TRUNKLINE GAS COMPANY, DOCKET NO. CP66-221

FINDINGS AND ORDER DIRECTING SALE OF NATURAL GAS

(Issued March 28, 1966)

On January 10, 1966, the Village of Belle Rive, Illinois (Applicant), filed in Docket No. CP66-221 an application, as amended on February 10, 1966 pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Respondent) to sell and deliver to Applicant natural gas required for resale in the Village of Belle Rive, Illinois, as more fully set forth in the application and amendment.

Applicant seeks delivery of the gas requirements of Belle Rive from Respondent at the point of delivery heretofore established by Respondent, pursuant to the Commission's order issued April 22, 1965, in Docket No. CP65-250, 33 FPC 846, for the Village of Dahlgren, Illinois. The gas is to be delivered to Dahlgren for the account of Applicant. No new interconnection to the facilities of Respondent will be required. Applicant states that it has made arrangements with Dahlgren to transport the gas for Applicant through the transmission facilities constructed by Dahlgren.

The estimated volumes of natural gas will be purchased under Trunkline's FPC Rate Schedule SG by Applicant and are stated to be:

	First year	Second year	Third year
Annual (Mcf)	9,858	14,444	18,931
Peak day (Mcf)	130	184	240

Applicant states that these volumes are required for the residential, public and commercial customers in the Village of Belle Rive and vicinity and along the transmission line, which do not now have natural gas service. The population of the proposed service area is approximately 331.

Applicant proposes to construct a complete distribution system and approximately three miles of 2-inch lateral pipeline extending from its town border station to the connection with Dahlgren. The estimated cost of the proposed construction is $95,000, which will be financed from the sale of gas revenue certificates.

On February 10, 1966, Respondent filed an answer to the application filed by Applicant in this proceeding stating it would render the requested service on order of the Commission favorably determining the merits of the application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on January 22, 1966 (31 F.R. 926). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) Applicant, Village of Belle Rive, Illinois, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to sell natural gas to Applicant under a service agreement to be executed by Applicant with Trunkline, in accordance with the Commission's Regulations, and to deliver up to 240 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Belle Rive, Illinois, environs, and along said lateral within one year from the date of issuance of this order.

The Commission orders:

(A) Trunkline Gas Company is directed to sell up to 240 Mcf of natural gas daily to Applicant and to deliver said gas under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP66–250

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 1, 1966, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP66–250 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities during a two year period for the modernization and improvement of Applicant's northern West Virginia segment of its transmission system, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct during 1966 a new 25 mile 30-inch transmission pipeline, and related dual 24-inch river crossing, extending from the existing Hastings Compressor Station, Wetzel County, West Virginia, to a proposed new delivery point in Monroe County, Ohio, for the East Ohio Gas Company (East Ohio), an existing customer, together with a measuring station at such new delivery point. Further, Applicant proposes to replace during 1967 the present compressor units and related facilities at Hastings Compressor Station with new compressor units and related facilities providing 7,000 horsepower.

The subject proposals will modernize and improve Applicant's northern West Virginia system by replacement of outmoded compressor facilities at Hastings, by the conversion of two existing high-pressure (1300 psig) 12-inch lines to lower pressure (900 psig) operation, and by the construction of the new 30-inch line. With the replacement and facilities herein proposed, Applicant will have the same overall capacity in this portion of its system as at present but with a rearranged pattern of deliveries to accommodate the reduction in capacity of the high-pressure system. The application indicates that most of the gas presently transported northeasterly through the high-pressure lines for deliveries to Applicant's northern divisions at Preston, Pennsylvania, will now be delivered through the proposed 30-inch line to East Ohio at Mullett, Ohio. Equivalent deliveries to the northern divisions at Preston will be made by Texas Eastern Transmission Corporation from gas the latter is authorized to transport for Applicant and presently delivers for Applicant's account to East Ohio at Mullett. Further, the proposed 30-inch line will be a facility which can be economically expanded to meet future growth of Applicant's markets downstream (north) of the Hastings Station.

The total estimated cost of the proposed facilities is $7,128,000, which cost will be financed with funds on hand and funds to be obtained from Applicant's parent, Consolidated Natural Gas Company.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation having its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 2, 1965, in Docket No. CP63–272 (33 FPC 150).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Consolidated Gas Supply Corporation to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized herein shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within two years from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GENERAL AMERICAN OIL COMPANY OF TEXAS, DOCKET NO. RI66–274; A. H. MEADOWS, DOCKET NO. RI66–275

ORDER GRANTING REHEARING FOR THE PURPOSE OF FURTHER CONSIDERATION

(Issued March 28, 1966)

General American Oil Company of Texas (General American) and A. H. Meadows (Meadows) filed on February 28, 1966, an application for rehearing of the Commission's order issued February 2, 1966, in Docket Nos. RI66–274 and RI66–275, 35 FPC 177, suspending for the statutory period proposed increased rates of 14.8479¢ per Mcf, inclusive of tax reimbursement,[1] tendered by them for their jurisdictional sales of residue gas derived from casinghead gas to El Paso Natural Gas Company (El Paso) in the Permian Basin Area of Texas. The proposed rates are designated as Supplement Nos. 6 and 3 to General American's FPC Gas Rate Schedule No. 32 and Meadows' FPC Gas Rate Schedule No. 1, respectively.

These rates were suspended because the quality statements tendered on January 3, 1966, in support of their filings were based on the quality of the wellhead gas instead of the residue gas. A review of the contracts at that time had indicated that the producers were being paid on the basis of residue volumes. For this reason the quality statements were rejected and the producers were required by the suspension order to submit new quality statements based on the quality of the residue gas.

In their application for rehearing General American and Meadows claim that gas sold under the subject rate schedules has always been delivered and metered at the lease. We need additional time, however, to ascertain whether the producers are being paid on the basis of wellhead volumes, in which case the proper point for determining the quality of the gas under Opinion No. 468, 34 FPC 159, would be at the point of delivery, and to determine the propriety of the various adjustments submitted in their quality statements.

The Commission finds:

To afford further time for consideration of these matters, it is appropriate and proper in the administration of the Natural Gas Act that rehearing be granted.

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[1] 18¢ base rate less contractual deduction of 3.3499¢ per Mcf for gathering, treating and compression, plus .1978¢ reimbursement.

The Commission orders:

The application for rehearing filed by General American and Meadows on February 28, 1966, in the above-entitled proceedings is granted for the purpose of further consideration of the issues raised therein.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66-251

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 2, 1966, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP66-251 an application, as supplemented on February 25, 1966, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(d) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing Applicant, during the three calendar years 1966 through 1968, to construct and operate natural gas pipeline facilities and compression facilities for the testing and development of underground reservoirs for the possible storage of natural gas, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant states in this "budget-type" application (1) that the volume of natural gas to be injected into the prospective storage fields will not exceed a total of 10,000,000 Mcf with not more than 2,000,000 Mcf being injected into any single reservoir; (2) that the gas will be injected for testing purposes only during off-peak periods; (3) that any storage field developed pursuant to authorization received in this docket will not be utilized to render service without further authorization of the Commission, and (4) the total expenditure for the three-year period will not exceed $3,000,000 with not more than $1,000,000 being spent in any one year period.

Further, Applicant states that it will comply with the provisions of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce and the construction and

operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Mississippi River Transmission Corporation, during the three calendar years 1966 through 1968, to construct and operate the proposed facilities for the testing and development of underground reservoirs for the storage of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(D) Applicant shall submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-258

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 4, 1966, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-258 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under

The Commission orders:

The application for rehearing filed by General American and Meadows on February 28, 1966, in the above-entitled proceedings is granted for the purpose of further consideration of the issues raised therein.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66-251

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 2, 1966, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP66-251 an application, as supplemented on February 25, 1966, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(d) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing Applicant, during the three calendar years 1966 through 1968, to construct and operate natural gas pipeline facilities and compression facilities for the testing and development of underground reservoirs for the possible storage of natural gas, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant states in this "budget-type" application (1) that the volume of natural gas to be injected into the prospective storage fields will not exceed a total of 10,000,000 Mcf with not more than 2,000,000 Mcf being injected into any single reservoir; (2) that the gas will be injected for testing purposes only during off-peak periods; (3) that any storage field developed pursuant to authorization received in this docket will not be utilized to render service without further authorization of the Commission, and (4) the total expenditure for the three-year period will not exceed $3,000,000 with not more than $1,000,000 being spent in any one year period.

Further, Applicant states that it will comply with the provisions of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce and the construction and

operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Mississippi River Transmission Corporation, during the three calendar years 1966 through 1968, to construct and operate the proposed facilities for the testing and development of underground reservoirs for the storage of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(D) Applicant shall submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-258

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 4, 1966, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-258 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the one year period commencing April 2, 1966, and the operation of certain natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing facilities, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $5,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G-200 and G-207 (3 FPC 273).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the one year period commencing April 2, 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct during the one year period commencing April 2, 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the one year period commencing April 2, 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64–107

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 21, 1966, Texas Gas Transmission Corporation (Petitioner) filed in Docket No. CP64–107 a petition to amend the certificate of public convenience and necessity issued in said docket on May 26, 1964, 31 FPC 1292, and amended on December 17, 1964, 32 FPC 1477, 1478, June 2, 1965, 33 FPC 1138, and December 1, 1965, 34 FPC 1408, by authorizing the construction and operation of facilities for one new natural gas delivery point for the City of Henderson, Kentucky, an existing customer, as more fully set forth in the petition to amend.

In the certificate of public convenience and necessity issued in this docket on May 26, 1964, and by the subsequent amendments, Petitioner was authorized to construct and operate certain natural gas facilities to meet increased contract demand requirements of its then existing customers during the 1964–65 and 1965–66 winter heating seasons.

The instant proposal is for an additional delivery point for gas for Henderson's anticipated resales of natural gas in a rural area adjacent to the city. The estimated volumes of natural gas to be delivered through the proposed new facilities are 1,600 Mcf per year, but there will be no increase in Henderson's contract demand.

The estimated cost to install the proposed facilities is $1,370, which will be paid for from cash on hand.

Due notice of the filing of the petition to amend was published in the Federal Register on March 4, 1966 (31 F.R. 3436). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP64-107 on May 26, 1964, as subsequently amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Texas Gas Transmission Corporation in Docket No. CP64-107 on May 26, 1964, and amended on December 17, 1964, June 2, 1965, and December 1, 1965, is further amended by authorizing the construction and operation of a new delivery point for use in delivering natural gas to the City of Henderson, Kentucky, as hereinbefore described and as more fully described in the petition to amend.

(B) In all other respects the certificate, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-259

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On February 4, 1966, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP66-259 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing May 30, 1966, and the operation of certain natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission system, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 24, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order, issued March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing May 30, 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to construct during the 12-month period commencing May 30, 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the 12-month period commencing May 30, 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. G-9070

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1966)

On January 18, 1966, United Fuel Gas Company (Applicant), filed in Docket No. G-9070 an application to amend the order of the Commission issued in said docket on October 13, 1955, 14 FPC 1038, and amended on September 16, 1957, 19 FPC 341, by requesting authorization to sell and deliver 20,000 Mcf of gas per day to the Kaiser Aluminum & Chemical Corporation (Kaiser) in lieu of the presently authorized 13,000 Mcf per day, all as more fully set forth in the application to amend.

In Docket No. G-9070 Applicant was authorized to construct and operate approximately 6 miles of 10-inch diameter pipeline in Jackson County, West Virginia and to sell up to 5,000 Mcf per day to Kaiser, near Ravenswood, West Virginia, on an interruptible basis. The certificate was amended by a Commission order of September 16, 1957, increasing the daily deliveries of gas to 13,000 Mcf.

The application to amend states that Kaiser has informed Applicant by letter dated December 7, 1965, that it anticipates an increase in its natural gas requirements because of planned installation of additional equipment. The application to amend further states that by letter dated January 10, 1966, Applicant and Kaiser have revised their existing sales agreement to permit the sale and delivery of increased volumes of natural gas in quantities up to 20,000 Mcf of gas per day.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on February 9, 1966, (31 F.R. 2559). No protest, petition to intervene, or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 13, 1955, as amended September 16, 1957, in Docket No. G-9070 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 13, 1955, as amended September 16, 1957, is further amended so as to authorize Applicant to transport and deliver up to 20,000 Mcf of natural gas daily on an interruptible basis to Kaiser in lieu of the 13,000 Mcf of interruptible natural gas presently authorized.

(B) The certificate order issued in Docket No. G-9070 is amended on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contract maximum obligations of Applicant for firm service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GULF STATES UTILITIES COMPANY, PROJECT NO. 2504

ORDER ISSUING MINOR-PART LICENSE (TRANSMISSION LINE)

(Issued March 29, 1966)

Gulf States Utilities Company (Applicant) of Beaumont, Texas, on February 15, 1965, filed an application for license under Section 4(e) of the Federal Power Act for proposed transmission line Project No. 2504 in Jasper and Tyler Counties, Texas. The project consists of two 138 kv, three-phase, 60 cycle, single circuit lines, carried on wood pole H-frames, connecting the United States' Sam Rayburn development with Applicant's Doucette Bulk and Jasper-Newton substations. Circuit No. 97, to the Doucette Bulk substation, is about 28 miles in length, and Circuit No. 455, to the Jasper-Newton substation, is about 13 miles in length. Both lines extend approximately 1,675 feet across lands of the United States within the Angelina National Forest and lands of the United States in the Sam Rayburn development. Project No. 2504 is subject to license as primary lines of the Sam Rayburn development.

The Southwestern Power Administration of the Department of the Interior markets the power from the Sam Rayburn development. Under a contract dated February 13, 1964, power is sold to the Sam Rayburn Electric Cooperative, Inc. (Sam Dam Co-op), whose members are preference customers under Federal power marketing policies. Under a contract of the same date between the Sam Dam Co-op and Applicant, this power is transmitted across Applicant's Circuits Nos. 97 and 455 and pooled with the energy in Applicant's electric system, and equivalent power is provided to the members of the Sam Dam Co-op. The contracts described above terminate on December 31, 1985.

The Department of Agriculture reported that the proposed lines will not interfere with the purposes of the Angelina National Forest. It requested that the terms and conditions of Form L-8 (17 FPC 1017) be incorporated in the license for the protection of the forest. It recommended that the license be made coterminous with the contracts covering the power marketing arrangements. Applicant, in reply, stated that it has no objections to these proposals, and they are adopted herein. Agriculture proposed, in addition, a provision in the license "that any excess capacity in the lines be made available for the wheeling of power to or for the account of other electric utilities * * *". Applicant responded that a wheeling condition would not be justifiable because the lines, by contract, are for the transmission of power to preference customers. In this connection, the Department of the Interior advised that: "During the period when the * * * contractual arrangement is in force, no wheeling requirement is needed for the Government to have transmission rights over the line since it has an acceptable agreement for marketing the hydroelectric power output from the Sam Rayburn Project." Interior added: "When a suitable marketing arrangement including use of this transmission line no longer exists, the Government should have the right to utilize the excess capacity in the transmission line to market the output of Sam Rayburn Dam hydroelectric power."

It thus appears that no wheeling provision is needed before December 31, 1985. The license herein granted for Project No. 2504 expires on that date, and if the parties are unable to provide further contractual arrangements for transmission, the Commission may, if it deems appropriate, include a wheeling provision in any new license.

The Secretary of the Army and Chief of Engineers reported that the plans of the project structures affecting navigation are satisfactory.

The Parks and Wildlife Department of the State of Texas recommended a provision in the license on soil erosion. This provision is contained in Article 15.

Since Applicant failed to file an Exhibit M showing the general description and specifications of the transmission equipment as required by the Commission's regulations, we are requiring such a filing by Article 18.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Texas, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice has been given. No protest or petition to intervene has been received. There is no conflicting application before the Commission.

(3) The proposed project will affect a Government dam, but the issuance of a license therefor, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which any reservation was created or acquired.

(5) The proposed transmission lines are primary lines as defined in Section 3(11) of the Federal Power Act, and are, therefore, subject to the licensing authority of the Commission.

(6) The amount of annual charges to be paid under the license for the project for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy and enjoyment of its lands is reasonable as hereinafter fixed and specified.

(7) The exhibit described in paragraph (B) below conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(8) The proposed transmission lines are a minor part only of a complete project within the meaning of Section 10(i) of the Act.

(9) It will be in the public interest to waive the following terms and conditions of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a); 10(c) insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This minor-part license is hereby issued under Sections 4(e) and 10(i) of the Federal Power Act (Act) to Gulf States Utilities Company (Licensee) for a period effective as of March 1, 1966, and terminating as of December 31, 1985, for the construction, operation and maintenance of transmission line Project No. 2504, subject to the terms and conditions of the Act, insofar as not expressly waived herein, which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Transmission line Project No. 2504 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) two 138,000 volt transmission lines, 3 phase, 60 cycles, single circuit, wood pole H-frame type, extending from the Sam Rayburn Dam, one to the Doucette Bulk-Substation and the other to the Jasper-Newton substation; crossing approximately 1,675 feet of 150 feet wide right-of-way in the Angelina National Forest and lands of the United States in the Sam Rayburn development.

(iii) all other structures, equipment, or facilities used or useful in the maintenance and operation of the project and located on the project area; which lands and project works are more specifically shown and described by a certain exhibit which formed part of the application and which is designated and described as:

Exhibit J & K: (FPC No. 2504–1) "138 K.V. Transmission Lines on United States of America Property at Sam Rayburn Dam.—North of Jasper, Texas—Jasper County—Application by Gulf States Utilities Company" dated February 12, 1965.

(C) This license is also subject to the terms and conditions set forth in Form L–8 dated December 15, 1953, and entitled, "Terms and Conditions of License for Minor-Part Project (Transmission Line) Affecting Lands of the United States," (17 FPC 1017) which terms and conditions, designated as Article 1 through 14 are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 15. The licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the transmission lines resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 16. The licensee shall complete construction of the project on or before May 30, 1966.

Article 17. The licensee shall pay to the United States the following annual charges effective as of March 1, 1966:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands for transmission line right-of-way, $5.00.

Article 18. The licensee shall, within six months from the effective date of this license, file with the Commission an Exhibit M, general description and specification of equipment, in conformance with the Commission's rules and regulations.

(D) The exhibit designated and described in paragraph (B) is hereby approved and made a part of the license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LANDS WITHDRAWN IN POWER SITE RESERVE NO. 66, DOCKET NO. DA-520-OREGON, BUREAU OF LAND MANAGEMENT, PORTLAND, OREGON

ORDER DENYING APPLICATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued March 29, 1966)

Application was filed by the Bureau of Land Management (Applicant) of Portland, Oregon, seeking a determination under Section 24 of the Federal Power Act for the purpose of restoring the following described lands of the United States withdrawn for power purposes:

Willamette Meridian, Oregon—T. 6 S., R. 13 E., sec. 24: E½SE¼NE¼; T. 6 S., R. 14 E., sec. 19: lots 17 and 18 (part of former lots 1 and 10) (50.10 acres).

Applicant seeks restoration to permit an exchange of the above-described lands, which were the subject of a Section 24 determination in Docket No. DA-358-Oregon, dated July 29, 1947, for mining purposes only, for other lands owned by the Deschutes Home Owners Association, Inc., (or members of the Association), more accessible to public roadways and which have a much larger river frontage, for use by Applicant for recreational development. Following the Commission's determination in DA-358-Oregon, the subject lands were restored to entry for mining purposes only by Restoration Order No. 1236 of November 7, 1947, and have since been occupied by houses built by the mining company for its supervisory personnel. When the company ceased its mining operations, the buildings were sold to individuals now seeking to obtain title to the lands. According to information made available to the Commission, the present owners of the houses are members of the aforementioned Association who have organized an integrated community on the subject lands, complete with utilities. One of the homes is the permanent home of one of its members and the others are used from six to eight months during the year.

The subject lands, which are withdrawn in Power Site Reserve No. 66, dated July 2, 1910, lie on the west bank of the Deschutes River at the Community of Dant, Oregon, and are located in a reach of the river which would be affected by the development of the Freida site or the downstream Maupin site proposed by both the U.S. Geological Survey and the U.S. Corps of Engineers. The water surface at the Maupin damsite is about 835 feet above sea level and a dam that would raise the water to an altitude of about 1,075 feet, as suggested, would create a gross head of 240 feet and, at average discharge (about 5,400 cfs) and 80 percent efficiency, the site has a power potential of about 88,000 kw. Development of either site would inundate a major portion of the subject lands. While such development is not contemplated in the near future, it is clear that the subject lands have considerable power value, and, in the circumstances, the release of the subject lands from power withdrawal or for restoration subject to the provisions of Section 24 of the Federal Power Act to permit probable additional costly improvements thereon would be adverse to their power values.

The Commission finds:

The subject lands are valuable for power purposes.

The Commission orders:

The aforesaid application is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NEVADA POWER COMPANY, DOCKET NO. E-6832

ORDER DIRECTING RATE SCHEDULE FILING AND TERMINATING PROCEEDING

(Issued March 29, 1966)

Upon completion of a minor corrective rate schedule filing, as described hereafter, the Commission hereby terminates its investigation of wholesale rates and charges of Nevada Power Company (Nevada Power) for service to the Colorado River Commission of Nevada (CRC), California-Pacific Utilities Company (Cal-Pac), and Southern California Edison Company (Edison). Available data indicate that Nevada Power's rates and charges to these customers will not yield revenues in excess of the company's costs of service.

Following our initiation of this proceeding[1] Nevada Power submitted cost and revenue data. Also, the Commission staff conducted an independent field examination of the Company's operations, books and data.

Our decision to discontinue further investigation and hearing at this time reflects our consideration of those data as well as the continuing nature of our rate regulatory jurisdiction over Nevada Power's wholesale rates and charges, (Section 206 of the Federal Power Act). In addition to formal proceedings the regulatory policies of this Commission contemplate continuing rate review of all jurisdictional rates and charges.

The rates and charges of Nevada Power here under investigation are designated in the files of the Commission as follows:

Designation	*Purchaser*
Rate Schedule FPC No. 1 Supplement No. 1 to FPC No. 1 (Nevada Power's LGS rate schedule)	CRC (for resale to Cal-Pac for the latter's Needles, California operating area[2]
Rate Schedule FPC No. 2 Supplement No. 1 to FPC No. 2 (Nevada Power's LGS rate schedule)	Cal-Pac (for resale in Henderson, Nevada operating area[2]
Rate Schedule FPC No. 3 (Nevada Power's LGS rate schedule)	Edison (for resale in its Death Valley, California operating area[3]

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[1] See orders of the Commission issued December 3, 1963, 30 FPC 1394, and July 9, 1958, *Nevada Power Company*, Docket No. E-6832 (formerly Southern Nevada Power Company).

[2] Cal-Pac's Needles, California and Henderson, Nevada operating areas are not electrically interconnected by means of facilities of that Company. Intervening and connecting facilities are those of Nevada Power and the Bureau of Reclamation, United States Department of the Interior. CRC is an instrumentality of the State of Nevada and receives power and energy entitlements upon behalf of that State pursuant to Section 5(c) of the Boulder Canyon Project Act, 45 Stat. 1060, 43 U.S.C. § 617d(c) (1964).

[3] Edison's Death Valley, California operating area is electrically isolated from other portions of that Company's electric system located in south and south central California, and west central Nevada. Intervening and connecting facilities are those of Nevada Power and Armagossa Valley Cooperative, Inc.; the latter having purchased the major part of the transmission and related facilities formerly owned and used by Nevada Power to complete deliveries to Edison. See Order Authorizing Sale of Facilities, *Nevada Power Company*, 32 FPC 1385. Presently, Nevada Power completes the monthly billings to Edison remitting the major portion of those charges to Armagossa Valley Cooperative, Inc.

During the twelve-month period ending December 31, 1964, Nevada Power's revenues from service to the three customers totaled $507,954; its billings reflecting the Company's filed LGS rate schedule except in the case of service to CRC for resale to Cal-Pac for its Needles operating area. In that instance Nevada Power observes certain practices designed to accommodate its LGS schedule to the supplemental and standby services supplied to the Needles area. Such practices have been observed for some time and are known to the wholesale customers, CRC and Cal-Pac, by reason of the letter agreements among the parties and Nevada Power's monthly bills. As hereinafter provided, the Company is being directed to incorporate those practices in a supplemental rate schedule completed for filing with this Commission pursuant to Part 35 of the Commission's Regulations under the Federal Power Act. In the course of Staff's field examination of Nevada Power this matter was called to the attention of Company's representatives.

The Nevada Public Service Commission, California Public Utilities Commission, and Edison, intervenors herein, have indicated their lack of objection to termination of this proceeding.

Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, that Nevada Power be directed to complete the specified supplemental rate schedule filing and the above-entitled proceeding be terminated all in the manner as hereinafter provided.

The Commission orders:

(A) Nevada Power shall file with this Commission within a period 30 days hereafter a supplement to its filed rate schedule FPC No. 1, as heretofore supplemented, so as to conform the Company's filed rates with its current billing practices.

(B) Subject to Nevada Power's compliance with the requirement of paragraph (A) above by filing a supplement to its filed rate schedule, in a form satisfactory to the Commission, this proceeding is terminated.

OPINION NO. 487

GEORGIA POWER COMPANY, DOCKET NOS. E-7099 AND E-7193

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER AND DENYING MOTION TO FILE BRIEF

(Issued March 30, 1966) *

Syllabus

1. **Resale load limitation restricting certain municipal customers from reselling power for industrial and commercial loads is clearly discriminatory—bargaining position is no justification or excuse for discriminatory practice. PP. 437, 438, 448.**
2. **Resale credit provision giving all municipal customers a credit for sales below a certain size is unjust and unduly discriminatory. PP. 437, 438, 448.**
3. **Argument in support of substitute and less restrictive load limitation applicable to all municipal customers [based on opinion testimony] is without merit. P. 438.**

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* Initial decision appears on p. 440. Opinion No. 487-A and order issued May 26. 1966, denies rehearing and stay, 35 FPC 818. Affirmed, *Georgia Power Co.* v. *F.P.C.*, 373 F 2d 485 (CA5-1967).

4. Possible revenue loss on other sales cannot justify retention of a discriminatory provision in a rate schedule. P. 438.
5. Even if load limitations did not discriminate between various municipal customers, they would not necessarily be just and reasonable. P. 438.
6. While Commission does not hold that there can be no circumstances under which load limitations are justified; it does not agree with company that normally it is consistent with public interest for wholesale supplier of electric power to restrict manner in which its customers may resell power. P. 439.
7. Contention that if no load limitations are permitted company should have further hearing to support higher level for WR-4 rate is without merit—under Section 205 of the Power Act, Company may at any time, tender new rate schedules, unless precluded by contractual commitments. P. 439.
8. Power company has not shown good cause to file additional brief. P. 439.
9. In a show cause proceeding, Commission *finds* rate schedules to be unjust, unreasonable and unduly discriminatory within the meaning of Sections 205 and 206 of the Federal Power Act and *requires* respondent to file new rate schedules.

Chairman White *not participating*

Tench C. Coxe, *C. M. Wallace*, and *William H. Schroeder*, for the Georgia Power Company.

Paul Rodgers, Assistant Attorney General of Georgia, for the Georgia Public Service Commission.

L. Clifford Adams, Jr., for the Georgia Municipal Association, Power Section.

C. Emerson Duncan, II, for the American Public Power Association and Power Section, Georgia Municipal Association.

Horace E. Richter, for the City of Cairo and City of Marietta, Georgia.

John T. Miller, Jr., for the City of Dalton, Georgia.

William C. Wise for Georgia Electric Membership Corporation and other cooperatives.

Drexel Journey, *Michael N. Mervin*, and *Sandra J. Strebel* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

This proceeding, which was instituted by our order to show cause issued May 27, 1963, 29 FPC 1049, involves the question of whether two provisions in the WR-4 rate schedules of Georgia Power Company (Georgia Power) applicable to wholesale sales to municipally-owned distributors for resale are unjust, unreasonable and unduly discriminatory and therefore unlawful under Sections 205 and 206 of the Federal Power Act, and if so, what remedy should be prescribed.

The first provision, a resale load ceiling provision, restricts 42[1] of Georgia Power's 50 municipal customers from reselling power for industrial and commercial loads above certain specified sizes. The second provision, a resale credit provision applicable to all 50 municipal customers, provides that Georgia

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[1] Resale load ceiling provisions are not found in the rate schedules applicable to six municipalities: Cartersville, College Park, Dalton, Douglas, Marietta and Sylvester. Also, Thomasville is limited through a franchise granted by it to Georgia Power from serving industrial loads in excess of 40 kw outside its city limits. The rate schedule for service to Cairo proscribes service by that city to any load in excess of 100 kw which Georgia Power assists in locating outside Cairo's city limits as presently constituted.

Power shall grant a credit to the municipal customer on the succeeding month's bill for sales below a certain size. Georgia Power did not defend the resale credit provision. Our discussion therefore relates solely to the resale load ceiling provision.

In his initial decision issued November 17, 1965, *infra*, p. 440, presiding examiner Harry C. Shriver found that the two provisions are unjust, unreasonable, unduly discriminatory and unlawful. He found the resale load ceiling provisions to be unduly discriminatory because they do not apply to all of the 50 municipal customers and are not applied uniformly by Georgia Power even to the towns subject to them. Accordingly, the examiner would require Georgia Power to eliminate the challenged provisions by filing supplemental rate schedules which would delete the provisions and would still provide Georgia Power with approximately the same revenues. The case comes before us on exceptions to the examiner's decision filed by Georgia Power. Briefs opposing Georgia Power's exceptions were filed by the Commission's staff, the Power Section of the Georgia Municipal Association and the City of Dalton, Georgia.

Upon consideration of the facts presented and arguments advanced, we conclude that the examiner's decision is essentially correct and should be adopted for the reasons stated in this opinion. In view of Georgia Power's exceptions, however, we believe that there are several matters which require further treatment.

Georgia Power does not defend the challenged resale load ceiling provisions in their present form. However, Georgia Power does take the position that if such provisions are eliminated, there should be substituted a new and less restrictive load ceiling provision which it has devised. The substitute load ceiling would apply to all 50 municipalities.

In support of its position, Georgia Power argues that when the WR-4 rate was first designed, a "low"[2] rate level was established in consideration of the fact that Georgia Power, and not the municipalities, was given the right to serve the larger industrial and commercial loads in and around the municipalities. It contends that if the load ceiling provisions are eliminated completely and the municipalities are given the right to serve the larger industrial loads, the level of the WR-4 rate must be raised. Georgia Power also contends that removing the load ceilings without increasing the WR-4 rate could cause Georgia Power to lose up to $800,000 in revenues and could give municipalities a competitive advantage over other towns in Georgia in attracting new industry. Georgia Power accordingly recommends its new load ceiling provision as a substitute for the existing provisions, arguing that the examiner never gave adequate consideration to the proposed provision.

We find these arguments to be without merit. The opinion testimony by a company official to the effect that the WR-4 rate was originally set "low" is meaningless. Georgia Power's $800,000 revenue loss figure is irrelevant, for possible revenue loss on other sales cannot justify the retention of a discriminatory provision in a rate schedule. Furthermore, the figure is based upon the assumption that the various municipalities would obtain all of the company's existing industrial loads which they are precluded from serving by the load limitations here in issue, an assumption for which there is no support in the record and which, in view of existing contractual commitments, seems most unlikely, at least in the foreseeable future.

Respondent's recommended new load ceiling provision was shown on the record to be arbitrary and unduly discriminatory. Under this provision, all municipal resale customers, including those which presently have no such limitations imposed upon them, would be limited to loads of "250 kw or 7½%

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[2] That is, lower than it would have been had the load limitation not been included.

of the demand established at the largest municipal delivery point, whichever is higher, but not more than 1000 kw." While this provision is urged as a method of ending the admitted discrimination between municipal resale customers of Georgia Power resulting from the existing situation, it does not do so.[3]

Even if Georgia Power's resale load limitations did not discriminate between various municipal customers, they would not necessarily be just and reasonable. While we do not here hold that there can be no circumstances under which load limitations are justified, we do not agree with the Company that it is normally consistent with the public interest for a wholesale supplier of electric power to restrict the manner in which its customer may resell the power. Nor has Georgia Power shown any special facts or circumstances which establish the reasonableness of its restriction in this case.

Georgia Power also contends that if no resale load ceilings are permitted, the Company should be permitted a further hearing so that it can support a higher level for the WR–4 rate. This contention is without merit. Staff correctly points out that under Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder, Georgia Power may, at any time, submit for filing new rate schedules, reflecting increased rates, unless legally precluded from doing so by contractual commitments. Such a filing would, of course, be subject to the provisions of Section 205(e). However, our order here requiring Respondent to file new sales contracts which will eliminate the contract provisions found to be unjust and unreasonable should not be made contingent upon the outcome of such a rate proceeding.

Finally, on February 2, 1966, Georgia Power filed a motion requesting that it be permitted to file an additional brief opposing the arguments theretofore advanced by Staff and the intervenors, which brief Georgia Power submitted with its motion. Staff and the intervenors opposed the motion. We conclude that Georgia Power has not shown good cause to file its additional brief since all the arguments advanced therein have already been extensively made in the briefs, filings, and record in this case and were considered by the Commission in arriving at this decision.

We have considered the exceptions to the examiner's decision not discussed herein. We have concluded that they are without substantial support in fact or reasonable basis in law or that they are immaterial to a decision in this case. They should, therefore, be denied. In conformity with this opinion, the presiding examiner's decision should be adopted as modified, effective as of the date of issuance of this opinion.

The Commission further finds:

(1) Georgia Power Company is a "public utility," within the meaning of that term as used in Section 201 of the Federal Power Act, and is subject to the jurisdiction of the Commission (17 FPC 324).

(2) Georgia Power's sales of electric energy to the municipalities at issue in this case, more fully described in the examiner's decision herein, are "sales of electric energy at wholesale in interstate commerce," within the meaning of Section 201 of the Federal Power Act, and are subject to the jurisdiction of the Commission and to provisions of Sections 205 and 206 of the said Act.

(3) The resale load ceiling provisions and the resale credit provisions at issue in this case, contained in Georgia Power's rate schedules applicable to the wholesale sales to the municipalities, including the provisions applicable to the City of Cairo, as more fully described in the examiner's decision herein, are

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[3] For example, as the Staff pointed out in its brief in response to exceptions, Albany, the largest of the municipal customers, would be limited to resale loads of 875 kw or less, while Griffin, with a total peak demand of less than one-third of Albany's, could resell loads up to 1000 kw.

unjust, unreasonable and unduly discriminatory within the meaning of Sections 205 and 206 of the Federal Power Act and are therefore unlawful.

(4) It is necessary and appropriate under the Federal Power Act, and required by the public interest, that the provisions referred to in paragraph (3) above be eliminated from Georgia Power's rate schedules on file with the Commission.

(5) It is necessary and appropriate under the Federal Power Act, and required by the public interest, that Georgia Power file supplements to its rate schedules for wholesale service to the 50 municipal customers referred to herein, superseding its present resale credit provisions with a rate returning to Georgia Power approximately the same revenue as under its present rate schedules, and without the resale ceiling provisions contained in the present rate schedules, which rate schedule supplements shall provide that each customer shall pay approximately the same for the first 12 months following the month in which this order is issued, as the customer would have paid during the same 12 months under the present rate.

The Commission orders:

(A) Georgia Power shall, within 75 days of the date of issuance of this order, tender for filing with the Commission, in conformity with Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder, and satisfactory to the Commission, supplements to its rate schedules for wholesale service to each of its 50 municipal customers referred to herein. Such rate schedule supplements shall contain no unlawful resale load ceiling provisions or resale credit provisions of any kind but, insofar as possible, shall be designed to provide approximately the same revenues to Georgia Power for the first 12 months following the date in which this opinion is issued as would have been received if the rate provisions herein disapproved were in effect for that period, and shall provide, insofar as possible, that each customer during such period shall pay approximately the same as the customer would have paid during such period under the presently existing rate schedule.

(B) Upon Commission acceptance of the new rate schedule supplements required to be filed by paragraph (A) above, and upon compliance by Georgia Power with the other requirements imposed herein and hereinafter in a manner satisfactory to the Commission, this proceeding shall be terminated.

(C) The presiding examiner's initial decision issued herein on November 17, 1965, is, to the extent not inconsistent herewith, adopted by the Commission, to constitute with this opinion and order its decision in this case, effective as of the date of issuance of this opinion and order.

(D) To the extent not herein granted, the exceptions to the examiner's decision are denied.

(E) Georgia Power's motion to file an additional brief is denied.

Chairman White *not participating.*

INITIAL DECISION

OF THE PRESIDING EXAMINER ON CERTAIN SUSPENDED RATE SCHEDULES OF THE GEORGIA POWER COMPANY, AND ON AN ORDER TO SHOW CASE WHY THE COMMISSION SHOULD NOT FIND AND DETERMINE CERTAIN RATE SCHEDULES OF THE COMPANY TO BE UNJUST AND UNREASONABLE PURSUANT TO SECTIONS 205, 206, 307, 308, 309 OF THE FEDERAL POWER ACT

(Issued November 17, 1965)

SHRIVER, *Presiding Examiner:* This is a proceeding which questions the lawfulness of certain rate schedules and practices of the Georgia Power Company

(Georgia Power) pursuant to Sections 205, 206, and 307 of the Federal Power Act. 16 U.S.C. 824d, *et seq.*

The Georgia Power Company, a Georgia corporation, is a public utility within the meaning of Section 203 of the Act, 17 FPC 324, 326. Georgia Power is a wholly owned subsidiary of the Southern Company and participates in the Southern Company Power Pool. Georgia Power distributes electric energy at retail to 645 incorporated and unincorporated communities. Its service also includes supplying electric energy at wholesale to about 50 municipalities and 44 rural electric cooperatives within the State.

The rate schedules under which it supplies energy to its municipal and cooperative customers, among other things, contain dual rates and other restrictive provisions allegedly having "the effect of restricting the rural electric cooperatives and municipalities from reselling to certain classes of potential customers power purchased from Georgia Power under the filed rate schedules and contracts."[1] Georgia Power is asked to justify the provisions restricting the larger loads which its customers might undertake to serve. This proceeding is concerned only with Georgia Power and the municipalities, the issues as to the cooperatives having heretofore been disposed of by the Commission's order of February 8, 1965.[2]

The present case arises out of the following actions. In an order issued on May 27, 1963, 29 FPC 1049 (Docket No. E-7099), the Commission directed Georgia Power to show cause in writing why the Commission should not find and determine that certain provisions contained in its rate schedules to be unjust and unreasonable, and if so found, to order a hearing to determine and fix just and reasonable rates for the service to its municipal and rural electric cooperative customers. On June 19, 1963, the Georgia Public Service Commission filed a notice of intervention. On July 15, 1963, the Commission issued an order accepting for filing Georgia Power's rate schedule FPC No. 634, City of Thomaston, Georgia, at delivery point No. 2, and amended its order of May 27, 1963, to include this schedule, 30 FPC 197. On September 5, 1963, the Commission issued orders granting permission to intervene to the American Public Power Association, and to the Power Section, Georgia Municipal Association (Georgia Municipal). On November 25, 1964, the Commission issued an order accepting for filing four additional rate schedule submittals[3] of Georgia Power for supplying further wholesale electric energy to the City of Cairo, Georgia, suspended for one day 2 other rate schedule submittals and consolidated the docket in this matter for hearing on February 15, 1965, Docket No. E-7193, with the order to show cause in Docket No. E-7099, 32 FPC 1368.

Meanwhile, on October 14, 1963, Georgia Power filed an answer to the Commission's order to show cause of May 27, 1963 in Docket No. E-7099, as amended, and among other things, denied that the sale of energy to the municipalities was a sale in interstate commerce and was subject to the Commission's jurisdiction. By order dated February 8, 1965, the Commission granted permission to intervene to the American Public Power Association in Docket

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[1] See, Commission order of May 27, 1963, 29 FPC 1049.

[2] At a prehearing conference in this proceeding on January 15, 1965 counsel for the Respondent as well as for the cooperatives submitted an offer of settlement of the issues as between the Georgia Power Company and the Georgia Electric Membership Corporation, which was certified to the Commission by the Examiner on January 19, 1965, and was approved by the Commission in its order of February 8, 1965, 33 FPC 188.

[3] Supplement No. 1 to Rate Schedule F.P.C. No. 671; Supplement No. 2 to Rate Schedule F.P.C. No. 671; Supplement No. 1 to Supplement No. 3 to Rate Schedule F.P.C. No. 671; Supplement No. 2 to Supplement No. 3 to Rate Schedule F.P.C. No. 671.

No. E-7193, and to the City of Dalton, and the City of Cairo, Georgia, in both dockets.

At a prehearing conference held before the Examiner, however, on January 15, 1965, counsel for the Respondent conceded to the general jurisdiction of the Commission in respect to its sales to the municipalities. (T. 78, 84). The Respondent also conceded that to the extent any kilowatt ceiling is less than the greater of either 250 kilowatts or 7½ percent of the demand at the largest municipal feed point of any municipality—that such ceiling is too low (Tr. 64, 80), and agreed that it be raised to whichever is higher, provided that the ceiling does not exceed 1,000 kw. (Br. 2). The Respondent's position in respect to the eight municipalities having no ceiling, including the City of Cairo, is that the restrictions contained in these schedules and contracts are in the public interest (Tr. 79-81, 86, 89-95).

The Respondent, Georgia Power, serves electric energy to approximately 90 percent of the area of the State of Georgia. Its customers as of the end of the year 1963 numbered more than 782,000. It supplies electric energy directly to the City of Atlanta and to some 19 other metropolitan areas. As already indicated, it sells energy for resale to some 50 municipalities in Georgia, and to 44 rural electric cooperatives.

For the year ended December 31, 1965, Georgia Power had a rated generating capacity of 2,085,880 kw and had total sales of about 14,223,329, kw hours. In this proceeding we are concerned only with the Respondent's sales for resale to its municipal customers. A substantial portion of the energy supplied to the Respondent's municipal customers is furnished by the Southeastern Power Administration (Southeastern). In 1963 this portion was approximately 28.5 percent of the total, and in 1964 approximately 27.9 percent of the total (Tr. 100). This energy is wheeled by the Respondent.

The 50 municipalities vary in size from about a thousand or less to more than 30,000 population. Their systems range in size from that of Brinson, with a peak load of 134 kw, to Albany with a load of 52,617 kw. The municipalities are scattered throughout the State of Georgia with a majority located in the western part of the State (Tr. 264, Ex. 22).

Georgia Power serves the 50 cities through some 80 delivery points at voltages of 12 kv, 4 kv, and 2.4 kv. The cities receive energy through the Georgia Power System under three contracts, one with Southeastern[4] as preference customers and two with Georgia Power. The energy generated by Southeastern and wheeled by Georgia Power is billed to the cities directly by Southeastern. Deficiency energy is provided by Georgia Power to the cities at the Southeastern rate. This is represented by the difference between Southeastern's allotment to the municipalities and the energy generated by Southeastern for delivery to them. Georgia Power also provides supplemental energy under contracts with the municipalities for all their electric requirements in excess of their Southeastern allotments (Tr. 100, 101).

The energy furnished by Southeastern to the Respondent for wheeling is commingled with its own energy and is not separately metered after entering the Georgia Power System. The Respondent is compensated by Southeastern for its wheeling service.

In its show cause order of May 27, 1963, the Commission challenges the resale credit provision[5] contained in Georgia Power's contracts (WR-4 Form) with the municipalities. Pursuant to this provision, the municipal system receives a credit on the succeeding month's bill for all services resold to customers utilizing a total of less than 5,000 kwh per month. The municipalities pay a higher rate for energy resold to ultimate consumers using more than 5,000 kwh per month than for the energy resold to consumers using less than 5,000 kwh per month. Each month the municipalities submit to the Respondent a list of ultimate consumers using between 2,500 and 5,000 kwh during the month (Tr. 264, Ex. 23). Since the municipalities pay one price for energy purchased for resale to one size customer, and another price for energy purchased for resale to another size customer, it is said that the resale credit provision constitutes a dual rate. In addition, not all the cities are permitted to serve the same size loads.

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[4] One city, namely Brinson, does not purchase power from Southeastern (Tr. 628).

[5] See Appendix A hereto reproduced from Exhibit No. 47 consisting of the resale credit provision in Georgia Power Company's schedule WR-4, p. 2.

The second provision challenged by the show cause order relates to load ceilings.[6] This provision limits 42 of the municipalities from reselling electric energy to any customers or loads in excess of a stated size. The variation of the limitations in respect to the municipalities range from 5 horsepower to 600 horsepower.[7] However, Georgia Power's contracts with 7 municipal systems have no load ceiling limitation.[8] In addition, the rate schedule for service to Cairo proscribes service by the city to any load in excess of 100 kw which Georgia Power assists in locating outside of Cairo's city limits as presently constituted (Item C-338). Georgia Power is not permitted to serve industrial loads within the Cairo City limits under its contract to Cairo.

Hearings were held in the case on January 15, 1965 (prehearing conference), and on February 15, March 17, April 19, May 12, May 21, July 26-28, 1965.[9] Two witnesses testified on behalf the Respondent,[10] two on behalf the Staff,[11] one for the City of Cairo,[12] and six for the Georgia Municipal Association and the municipalities.[13]

There are but two basic issues in the case: (1) Are the resale load limitations contained in 42 of the Respondent's 50 wholesale municipal contracts unjust, unreasonable, and unduly discriminatory and, therefore, not lawful under the Federal Power Act, and (2) does the resale credit granted by the Respondent to its wholesale customers under its contracts constitute an unreasonable restriction on those customers?

In justification of the resale credit and the ceiling provisions in its WR-4 schedule the Respondent asserts that it is important to consider the philosophy leading to the establishment of the WR-4 rate, *i.e.* (1) that the rate was offered municipal systems for the purpose of assisting them to extend service to small users, (2) that the Respondent did not contemplate competition with its municipal customers for industrial and other large loads when the WR-4 rate was made available, (3) that the WR-4 schedule was designed to encourage municipalities to extend service to small electric users, and (4) that the schedule and contract "are predicated on the proposition that Respondent will serve customers within the municipality as to which the demand exceeds the specified ceiling amount."

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[6] See Appendix B hereto reproduced from Exhibit No. 47 consisting of the ceiling provision in Georgia Power Company's schedule WR-4, p. 1.

[7] One horsepower equals 0.746 kw.

[8] These cities are Cartersville, College Park, Dalton, Douglas, Marietta, Sylvester, Thomasville. The City of Thomasville is limited through a franchise granted by it to Georgia Power from serving industrial loads in excess of 40 kw outside its city limits (Tr. 228, Ex. 57). With one exemption, these cities represent the relatively larger municipalities served by Georgia Power.

[9] Settlement negotiations were carried on by the Respondent with representatives of the municipalities for several months, particularly between April and July 1965. The offers of settlement for various reasons were not acceptable to all the municipalities.

[10] Mr. C. M. Wallace, Jr. and Henry H. Strozier.

[11] William S. Syrett and Telford G. Swennes.

[12] John W. Walker.

[13] Messrs. E. K. Overstreet, Charles L. Smith, Herbert M. Crane, Hughes Palmer, W. R. Clayton and John M. David.

This "philosophy" is not borne out by the record. The evidence does not indicate that the WR-4 rate has had the effect of assisting the municipalities to extend service to small users. The Respondent's insistence upon a ceiling in its negotiations with the municipalities at various times belies its assertion that it did not contemplate competition with its wholesale customers for industrial and other large loads when the WR-4 was first made available. The justification claimed by the Respondent for the ceiling limitation is not substantiated by the testimony of its own witness.[14] To assert, as the Respondent does, that the schedule and contract are predicated on the proposition that the Respondent will serve customers within the municipality as to which the demand exceeds the specified ceiling amount is a tautologous way of saying that the Respondent will serve large industrial loads within a city because it is to its best interest to do so. This view is also supported by other testimony. A witness for the Interveners indicated that in practice the WR-4 rate has the effect of discouraging service to large high load factor customers rather than encouraging service to small users.[15]

The Respondent next says that the reasonableness of its ceiling provision cannot be considered without reference to the level of the WR-4 rate. The Respondent argues that more revenue is derived from direct sales to large loads than through indirect sales through a municipal system, and that it must bear a substantial expense to enable a municipal system to serve a large load. One answer to this argument is that it is irrelevant to the issue in this proceeding.

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[14] The Respondent's Vice President-in-Charge-of-Sales testified on cross-examination:

Q. (By Mr. Miller) Then at the time the rate was made available all of your municipal contracts then had limitations?

A. No, I would not say that all of them did, because some have historically not had limitations in them.

Q. Even at that time?

A. That is right.

Q. And who would those be?

A. Well, I think they are the seven towns or eight towns referred to: Cartersville, Marietta, Dalton, College Park, Douglas, Sylvester, Cairo, Thomasville (Tr. 603-604).

* * * * * * *

Q. Well, let's go back to the eight then. Why had you reason to believe 10 to 15 years ago that you would get no competition from the eight municipalities who had no limitations in their contracts?

A. Well, I think we would get competition from them (Tr. 607).

[15] Mr. W. R. Clayton testified in part as follows:

Q. When did you first execute a contract with the Respondent for the purchase of energy?

A. We (Thomasville) first entered into a contract with the Georgia Power & Light Company and the Georgia Power Company jointly in 1954 for the purchase of a portion of our electric requirements instead of expanding our power plant.

In 1960 we negotiated a contract with the Georgia Power Company for the purchase of all of our power except SEPA allocation and as a result discontinued our own generation facilities. During these 1960 negotiations, the Power Company continued to insist on the right to serve customers over a certain size until the final stages of negotiation. The city was not agreeable and they finally agreed to waive this factor in the overall package of negotiations (Tr. 228-229).

* * * * * * *

For 49 years the city electric system was isolated from any other source of power except its own generation. During this period the city necessarily served all large loads, not only in the city but in the surrounding rural areas up to ten miles from the city limits (Tr. 233).

This is not a proceeding to determine just and reasonable rates. The fact that the Respondent derives more income from the industrial loads which it serves directly is no justification for discrimination. If the removal of the ceiling provision would deprive the Respondent of substantial potential revenue otherwise available to it derived from direct service of loads in the municipalities which the Respondent serves at wholesale, as the Respondent says, then it must be admitted that the Respondent is already deprived of substantial revenue in respect to the eight cities that have no ceiling in their contracts. Again, if the ceiling cannot be considered without reference to a WR-4 rate level that is compensatory, then most of the municipalities (generally the smaller ones) are necessarily making up for the loss of revenue that the Respondent foregoes in respect to the cities which presently have no ceiling.

As to the argument that the Respondent can only supply the capacity needed to enable a municipal system to serve a large load after substantial expense, there is no solid support for this contention. Manifestly, the expense involved in serving a larger load is more than that in serving a smaller one, but it is not clear by and large why the increase should be greater when service is through a municipal system. As the Respondent admits, it must furnish the same generation and transmission to the vicinity of the customer irrespective of whether the municipality or the Respondent serves the load. Since some facilities are already available it would seem that the expense should be less in providing indirect service, but here again the Respondent is confronted with the fact that if the argument is valid under the WR-4 rate level in serving the 42 cities having ceilings, it must be invalid in regard the 8 cities having no ceilings.

The Respondent says that the WR-4 schedule contains no provision or adequate compensation to the Respondent for generation, transmission facilities, or local facilities required to make power available to the municipalities for resale to consumers whose demands exceed the specified ceiling kilowatt amount. In support thereof the Respondent cites figures as to generation and line costs, but these figures are of no significance when considered in isolation or without other costs normally considered in a rate proceeding. The Respondent argues that investors would not countenance the removal of the ceiling provision from the WR-4 rate schedule, and that they would shy away from its securities if large sums were expended on service, generation, and transmission to a locality where service is required by a new load and the Respondent would not be permitted to serve it directly. This argument presupposes that the Respondent's stockholders and investors are familiar with the provisions of the WR-4 rate schedule and that they have a right to have this schedule continued in effect whether it be legal or illegal. The Respondent's assets are held by a holding company; its investors have no vested right in the WR-4 schedule, and the Respondent's argument is not supported by creditable testimony. At best this argument is highly speculative. Accordingly, it must be rejected.

The Respondent argues that its WR-4 schedule is predicated on the Respondent's right to serve loads in excess of the ceilings, and that a municipality which seeks to serve those loads competes with it. When it is considered that the loads vary from 5 hp to 600 hp, that some of the ceilings are enforced and some are not, and that 8 cities have no ceilings, it is apparent that the first part of the Respondent's argument loses considerable of its force. As to the second, even though the municipalities having no ceilings are in competition with the Respondent, this competition, as will be seen hereafter, is not unsound per se.

Another argument brought forward by the Respondent is that competition "with its own power for large loads" is a violation of public policy. In support thereof the Respondent refers to two cases under state laws, *Boston Real Estate Board* v. *Massachusetts Department of Public Utilities*, 136 N.E. 2d 243 (Mass. Sup. Ct. 1956), and *City of High Point* v. *Duke Power Company*, 34 F. Supp. 339 (U.S.D.C., N.C., 1940), and a Tennessee Valley Authority contract limiting the end use of electric energy. We think that neither of the cases cited is controlling here. In the Boston case, the suit was brought by persons owning and operating real estate who engaged in "within-the-block" or "within-the-building" distribution of electricity at retail and purchased it wholesale. The distributors performed no extended transportation. The court properly held that the Department of Public Utilities of the Commonwealth could eliminate the competition between the Boston Edison Company, the supplier, and such distributors. The court based its decision on state policies and the general interest of encouraging a monopoly of supply. In the High Point case, the Respondent relied upon the rationale of the District Court which was not followed by the Circuit Court of Appeals. The Circuit Court held (120 F. 2d 866, 869, CA4–1941) that "we need not consider whether the power company was within its rights in insisting upon the incorporation in the contracts of the clause restricting the resale of current, or whether the provisions of the franchise forbade it to sell current for power purposes in competition with the city. All arguments addressed to these questions become moot in view of the fact that no contract of any sort was executed and consequently no rights arising out of any such contracts are here involved * * *." Thus it is apparent that proliferation of distribution by private parties is not the same as distribution by municipalities and cannot be sanctioned.

But whatever may be said for the cases just cited, cities and towns do not stand on the same footing as a utility company or a private party in the resale of electric energy, and certainly have a different posture under State law as contrasted to Federal law, particularly under the Federal Power Act.

The Tennessee Valley Authority contracts cited (Items A and B) are of no help to the Respondent. Under the TVA Act, the Board of Directors is authorized by Congress (16 U.S.C., 831i) to give priority in the sale of power to public bodies: the State, county, municipalities, and cooperative organizations, over private utility companies and other persons. The Board may lawfully include in its contracts resale price maintenance provisions. *Tennessee Electric Power Co.* v. *T.V.A.*, 306 U.S. 118, 142 (1939).

It does not necessarily follow, as the Respondent contends, that a smaller investment in local facilities is required if the Respondent serves large loads directly rather than through a municipality. The Respondent admits that each service is dependent on local or individual circumstances, with which we agree. Similarly, it is not to be concluded that the Respondent had always furnished better service to industrial loads over that furnished by the municipalities. The Respondent's testimony on this was denied by staff witnesses and was sharply disputed by witnesses for the Interveners.

It is said that the WR–4 rate level is dependent on the continued existence of the ceiling provisions, notwithstanding the variance in the level and that some cities have no ceiling. The Respondent argues that the cost of generation, transmission and delivery point facilities necessary for service to large loads whose demands exceed the contract ceilings are not reflected in this rate, and that the rate provides no protection to Georgia Power. Under the circumstances in this case we think these arguments are invalid and should be rejected. Among other reasons, they in the end come down to a question of reasonableness and an injunction not to remove the ceilings else the rate of return be disturbed. But we are not here concerned with reasonableness in the sense that the rates to the cities are too high or too low, but with discrimination as between the Respondent and the cities. The Respondent's argument cannot stand in the face of the variety of ceilings. The argument as to reasonableness might perhaps be made in most cases of discrimination.

The Respondent asserts that if the ceiling provision is lifted industrial customers would be able to obtain power through the municipalities at lower rates than other industrial customers pay for direct service, which would result in discrimination. The Respondent says that municipal manipulation of rates is foreign to the basic concept of utility regulation, and that the Commission must see that customers are treated alike. This argument is essentially a plea for a complete monopoly in favor of the Respondent. There is no evidence to indicate that industrial loads now served through municipalities having no ceilings are charged uniformly lower rates than the Respondent's customers who receive direct service. If municipal manipulation of rates is foreign to the concept of utility regulation, the same can be said of rates arrived at by negotiation and manipulation by utility companies. We agree with the Respondent that the customers should be treated alike—certainly those in the same class, which is the very purpose of this proceeding.

The Respondent contends that the municipalities can undersell it under the WR-4 rate as to industrial loads. It indicates that the municipalities pay no taxes and that they may grant favors and privileges to industry. Respondent says that the municipal rates are unregulated. But it cannot be assumed that the municipalities are in business for profit or that their sense of public responsibility is less than that of the Respondent. They are public bodies and accordingly, as indicated heretofore, do not stand on the same footing as a private utility company.

In conclusion, the Respondent claims that the ceiling provision is the predicate upon which the level of the present WR-4 rate is based. It says that its resale credit provision is just and reasonable; and that the ceiling provision, which it agrees to adopt in lieu of the present ceilings—namely a ceiling set at the greater of 250 kw or 7½ percent of the demand at the largest municipal delivery point, provided that ceiling does not exceed 1,000 kw, is also just and reasonable. The Respondent then asserts that the Examiner, even if he finds the challenged provisions unreasonable, cannot require a new rate to be put into effect in this proceeding. We think that this argument is erroneous. It is based upon a misconception of the purpose of the proceeding. The instant proceeding is not aimed at determining reasonable rates for Georgia Power but rather at abolishing its discriminatory practices and thereby securing more reasonable and equitable rates for its municipal customers.

The evidence in this case reveals that the load limitations contained in Georgia Power's contracts with the 42 cities and towns which it serves adversely affects them, and that these limitations restrict the development of their electric systems. The municipalities accordingly are handicapped in attracting new industry and in improving their economy. New industry, in turn means new jobs, increased population, increased tax revenue, and additional payrolls. Two witnesses for the cities indicated that the restrictions on serving large loads indirectly affects the allocations to the cities of Southeastern power which are based on historic peak demands. Since the municipalities are hampered in serving large loads, these peaks are kept down and, in turn, the allocations of Southeastern energy. Since Southeastern energy is less costly to the cities than that purchased from Georgia Power, the total cost of energy to the municipalities is not reduced. Under the circumstances, it is certainly not in the public interest that Georgia Power should be permitted to enforce its present limitations, to determine which cities should be permitted new industries, nor provide load limitations for one city and none or a different one for another similarly situated.

Admittedly, the 50 municipalities are served by Georgia Power under the same rate schedule except that 7 of them have no resale load limitation in their contracts, and one city has a resale restriction with limited application outside its city limits. In respect to the 42 cities, the load limitations vary from 5 hp to 600 hp. The explanation for the foregoing is that seven or more of the municipalities, having stronger bargaining positions, refuse to accept the restrictions imposed by Georgia Power. The load limitations imposed on the 42 cities are clearly discriminatory. Bargaining position is no justification or excuse for discriminatory practices. *Otter Tail Power Company*, 2 FPC 134. 142.

As already noted, the evidence discloses considerable variation in the load limitations as between the different cities and towns which are Georgia Power customers, and that some cities have no load limitation. Since there is no uniformity, the municipalities are in a different position as to each other as well as in relation to Georgia Power in securing and serving new industry, new loads, or in improving the load factor of their systems and thus reducing the unit cost of operating their respective systems. When Georgia Power has seen fit, it has insisted upon the enforcement of its load limitations, thereby preventing its customers from securing and serving new loads. In other instances it has not, hence the municipality was free to compete for new loads. Under these circumstances and based on the other evidence of record, it is plain that the load limitations in Georgia Power's schedules for service to its 42 municipal wholesale customers, including the City of Cairo, are unjust, unreasonable and unduly discriminatory.

The Respondent claims that its resale credit provision is designed to encourage the municipalities to extend service to customers of small amounts of electric power. But it might be concluded that it was designed to prevent competition. Under the resale credit provision, the municipality pays a higher rate for energy which it resells to large power consumers than it pays for energy resold to small consumers. The municipality thus pays a dual rate. This has the effect of discouraging municipalities from serving large loads. Accordingly, any unit cost advantage that a municipality gains from a large high load factor industrial customer is offset by the higher rate which the municipality must pay Georgia Power for power with which it serves that load. In this way the municipalities are prevented from competing with Georgia Power for industrial loads, since it is more difficult for a municipality to sell power to large users at low rates. In fact, one of Georgia Power's witnesses stated that, "Respondent makes every effort to prevent competitive resale of energy supplied by it" (Tr. 106). Under the circumstances and the testimony, it can hardly be denied that, although Georgia Power's rate is the same for all its municipal resale customers, they are not treated uniformly and the resale credit provision is unjust, unreasonable, unduly discriminatory, and illegal under the Act, and it is so held.

One additional matter merits consideration. In its brief, Counsel for the Staff says that the Respondent seeks to prevent the competitive resale by the municipalities of energy supplied by the Respondent, that some of the energy supplied is furnished by Southeastern, that the municipalities are engaged in horizontal competition with Georgia Power in the sale of power to industrial customers, and that Georgia Power's restrictive contracts with the municipalities are a violation of the Sherman Antitrust Act (15 U.S.C. 1–7) and of antitrust standards as laid down by the Courts. *White Motor Company* v. *U.S.*, 372 U.S. 253, 259; *Pennsylvania Water & Power Company* v. *Consolidated Gas, Electric Light & Power Company of Baltimore*, 184 F. 2d 552, 558. Although we agree that the restrictions contained in Georgia Power's schedules might be construed as limiting the area of service of the municipalities and as preventing competition, we have held that both the ceiling limitation and the resale credit provision are unjust, unreasonable, unduly discriminatory, and unlawful. Accordingly under the circumstances, it is unnecessary to decide whether the restrictions complained of are in violation of the Sherman Act or of antitrust standards. The numerous cases cited in the briefs have been considered, likewise many minor points raised in the record. It is unnecessary that they be discussed in detail.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, the briefs, and arguments of Counsel, it is found and concluded in addition to the findings and conclusions heretofore stated that:

(1) Georgia Power Company is a corporation organized and existing pursuant to the laws of the State of Georgia. It owns and operates facilities, among others, for the transmission and sale at wholesale for resale of electric energy, which is transmitted from points of generation in the States of Georgia and Alabama, among others, to points of consumption outside the state in which it is generated, which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) Georgia Power Company is a public utility within the meaning of that term as used in Section 201 of the Federal Power Act, and subject to the jurisdiction of the Commission.

(3) Georgia Power Company, in effecting each of the sales of electric energy at wholesale under the rate schedules referred to in the Commission's orders of May 27, 1963, and November 25, 1964, as amended, transmits and sells electric energy at wholesale in interstate commerce for resale within the meaning of Sections 201, 205, and 206 of the Federal Power Act.

(4) The resale load limitations in Georgia Power Company's rate schedules for service to 42 municipal wholesale customers, referred to in the Commission's Order to Show Cause issued May 27, 1963, are unjust, unreasonable, and unduly discriminatory within the meaning of Sections 205 and 206 of the Federal Power Act and are therefore unlawful.

(5) The resale load limitation in the Georgia Power Company's rate schedule with the City of Cairo, suspended by the Commission's order of November 25, 1964, is unjust, unreasonable, and unduly discriminatory within the meaning of Sections 205 and 206 of the Federal Power Act and is therefore unlawful.

(6) The resale credit provision contained in the Georgia Power Company's rate schedules for service to its 50 municipally-owned wholesale customers, referred to in the Commission's order of May 27, 1963, and suspended as to the City of Cairo by the Commission's order of November 25, 1964, is unjust and unreasonable within the meaning of Sections 205 and 206 of the Federal Power Act and is therefore unlawful.

(7) It is necessary and appropriate under the Federal Power Act that the resale load limitations referred to in Findings (4) and (5) above be stricken from the Georgia Power Company's rate schedules on file with the Commission.

(8) It is necessary and appropriate under the Federal Power Act that the Georgia Power Company file rate schedule supplements to its rate schedules

for wholesale service to its 50 municipally owned customers, superseding its present resale credit provisions with a rate returning to the Georgia Power Company approximately the same revenue as under its present rate schedule, but without the resale credit provisions contained in the present rate schedule, which rate schedule supplements shall provide that each customer shall pay approximately the same for the first 12 months following the month in which this order is issued, as the customer would have paid during the same twelve months under the present rate.

ORDER

WHEREFORE *it is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that:

(A) Within 60 days of the date of this order the Georgia Power Company shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, rate schedule supplementals to its rate schedules for wholesale service to each of its 50 municipal customers. Such rate schedule supplements shall contain no horsepower or kilowatt ceiling limitations or resale credit provisions but, insofar as possible, shall be designed to provide approximately the same revenue to the Georgia Power Company for the first 12 months following the date in which this order is issued as would have been received if the rate herein disallowed were in effect for that period, and shall provide, insofar as possible, that each customer during such period shall pay approximately the same as the customer would have paid during such period under the present rate.

(B) Upon the submission of new rate schedule supplements which are satisfactory and acceptable to the Commission and upon compliance with all the other requirements contained herein by the Georgia Power Company, this proceeding shall be terminated.

HARRY C. SHRIVER,
Presiding Examiner.

APPENDIX A

FOURTH

Resale Credit

Subject to limitations in following paragraph a credit against net bills will be allowed on that part of the total energy purchased each month which is equal to the KWH actually resold to retail customers in the preceding month, the amount of such credit to be determined as follows:

0.50¢ per KWH resold not to exceed the number of KWH billed in the first block of the rate schedule in the current month, plus

0.35¢ per additional KWH resold, if any, not to exceed the number of KWH billed in the second block, plus

0.25¢ per additional KWH resold, if any, not to exceed the number of KWH billed in the third block, plus

0.10¢ per additional KWH resold, if any, in excess of the above.

Determination of KWH resold

For the purpose of billing under this rate schedule, a retail customer is defined as any customer who uses less than 5,000 KWH during the month. Should such customer be served by the distributing agency through two or more meters at one location, then the aggregate consumption by that customer shall determine his eligibility. The municipality shall report to the Company not later than the tenth of each month the number of KWH resold to such retail customers in the preceding month, and such report shall be used by the Company in preparing its bill for the current month's consumption. This report shall show the number of customers and the total KWH resold to them, as a single item for all customers who used less than 1,000 KWH during the month being reported, and as separate items the names and consumptions of all customers who used between 1,000 KWH and 5,000 KWH. Energy resold to larger customers, losses, and energy used by the municipality (even though carried on the books as a sale to some other department of the municipal government) are specifically excluded from eligibility as KWH resold. Should the Company fail to receive such report, the KWH used by the excluded items, enumerated in the preceding sentence shall be estimated by the Company and deducted from the total KWH, the remainder then being treated as KWH resold, but if the KWH resold is estimated in this manner it shall not exceed 40% of the total KWH to be billed * * *.

APPENDIX B

FIRST

* * * The Company reserves the right to sell electric energy in said City, to parties whose initial connected load exceeds horsepower, in accordance with the manufacturer's standard aggregate rating of the electrical apparatus installed or to be installed.

The Company hereby agrees that the Customer shall have the exclusive right to re-sell electrical energy to all other parties in said City, provided, however, that should the Customer fail to sell electrical energy to power users each of whose aggregate capacity installed or to be installed is less than horsepower, the Company shall have the right to sell electrical energy to such users, after securing the Customer's consent to take such business * * *.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ANNUAL REPORT FORM PRESCRIBED FOR NATURAL GAS COMPANIES—MAIN LINE DIRECT INDUSTRIAL SALES, DOCKET NO. R-243

ORDER NO. 300-A

AMENDING ORDER NO. 300 AND CLARIFYING INSTRUCTIONS FOR THE USE OF SCHEDULE (PAGE 520A) IN FPC FORM NO. 2

(Issued March 30, 1966) *

The Commission's Order No. 300, issued June 24, 1965, in this proceeding prescribed a schedule entitled "Curtailments of Main Line Industrial Customers" to be filed as a supplement to the annual report, FPC Form No. 2, required by § 260.1 of the Commission's regulations to be made by Class A and B natural gas companies subject to the jurisdiction of the Commission (30 F.R. 8331, 33 FPC 1286). The order also provided that the schedule would be effective for the reporting year 1965 and is to be filed by March 31, 1966, with, but separate from, Form No. 2.

Recently, we have received informal requests from two of the companies required to submit the schedule. They ask clarification of the instructions

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* Published in the Federal Register on April 6, 1966 (31 F.R. 5428).

which it contains. The first relates to Instruction No. 1 to the schedule which reads:

> 1. The pipeline company shall report below particulars concerning curtailments of deliveries of natural gas to each customer identified in the preceding schedule (Main Line Industrial Sales of Natural Gas). Curtailments of customers to which sales of less than 50,000 Mcf per year were made may be grouped in totals by states.

The schedule requires the reporting of curtailments of main line industrial customers, the average daily delivery during the system 3-day peak period, and the maximum 24-hour delivery during the year to such customers.

The question raised by one company was whether the delivery information should be reported even if the customer was not curtailed during the reporting year. Our answer is affirmative. Our order in this proceeding not only prescribed the schedule here under discussion but, more basically, completely revised Part 155 of the regulations which requires the companies to furnish copies of, and information with respect to, their contracts and rate schedules for direct industrial sales. Our purpose in so doing is made clear by the following paragraph of that order (*supra*, p. 1287):

> The Commission has no rate jurisdiction over direct industrial sales but it does have certificate jurisdiction pursuant to section 7 of the Act to determine whether the transportation and delivery of natural gas to such customers, and the facilities, if any, meet the standards of public convenience and necessity. In order to exercise this jurisdiction intelligently as well as to make proper allocation between jurisdictional and nonjurisdictional operations of a pipeline in fixing the rates for the jurisdictional sales, we believe we must secure reasonable information as to the nature of the pipeline's direct industrial sales.

Hence, reports on curtailment comprise only a portion of the information needed and Instruction No. 1 in the schedule requires delivery information to be reported for each main line direct industrial customer, whether or not the customer was curtailed during the year. We are here amending the instruction to make this clear.

The second point raised relates to the yearly period for which curtailment is to be reported. The instructions to the schedule make no reference to the subject and one company requests clarification. Although the annual report, of which the schedule is a part, is designed generally for the reporting of information on a calendar year basis, the company suggests that information on curtailments would be more meaningful if it covered a period which includes a single heating season rather than a period including portions of two noncontinuous heating seasons, as the calendar basis does. We recognize that the yearly period covered by the schedule (p. 520) "Main Line Industrial Sales of Natural Gas" is not coterminous with the period for reporting curtailments here being prescribed but we do not believe that this will cause the reporting companies any particular difficulty. We find, therefore, that the suggestion made merits adoption and, accordingly, we are amending ordering paragraph (C) of Order No. 300 and the schedule it prescribes to that effect.

The Commission finds:

(1) It is necessary and appropriate for the administration of the Natural Gas Act that amendments to Order No. 300 and the schedule it prescribed interpreting Instruction No. 1 and adding Instruction No. 7 be adopted.

(2) Since one of the amendments herein ordered involves interpretation of an existing requirement and the other involves a change in procedure not imposing any additional reporting burden on the persons affected thereby, fur-

ther notice pursuant to section 4(a) of the Administrative Procedure Act is not required.

(3) Since the information required by the schedule here being amended is, in all probability, now being compiled by the persons affected thereby, the changes here made should be brought to their attention as soon as possible. To that end we are making the amendments effective forthwith.

The Commission, acting pursuant to the authority heretofore set out in Order No. 300, *orders:*

(A) Ordering paragraph (C) of Order No. 300, issued herein on June 24, 1965 (33 FPC 1286 at p. 1290, 30 F.R. 8331), is amended to read as follows:

> (C) Effective for the 12-month period ending April 30, 1966, a new schedule, "Curtailments of Main Line Industrial Customers," as set out in *Attachment A* hereto*, is prescribed as a supplement to F.P.C. Form No. 2. The schedule shall be filed by May 15, 1966 and shall not be available for inspection in public files of the Commission except pursuant to § 1.36(e) of this chapter. The Commission may, also, when it finds such action to be in the public interest, authorize such schedules to be made public and incorporated in the record of any proceeding before the Commission or the courts.

(B) The schedule "Curtailments of Main Line Industrial Customers", prescribed by ordering paragraph (C) of Order No. 300, as amended by paragraph (A) hereof, is amended as follows:

> 1. Instruction 1. is amended by inserting a sentence, to follow the first sentence thereof, to read:
>
> "If there were none, so state in column (b)."
>
> 2. Add the following Instruction 7:
>
> "7. The information on this schedule shall cover the period May 1 of the reported year through April 30 of the year following the reported year. The schedule shall be filed by May 15 of the year following the reported year."

These amendments are set out on the appended copy of the schedule.*

[Secs. 10, 16; 52 Stat. 826, 830; 15 U.S.C. 717i, 717o.]

(C) These amendments shall be effective upon the issuance of this order.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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* Omitted in printing.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, ET AL., DOCKET NO. CP66-226, ET AL.

ORDER GRANTING WAIVER IN PART AND DENYING WITHDRAWAL OF APPLICATION

(Issued April 4, 1966)

On February 25, 1966, Arkansas Louisiana Gas Company (Arkla) filed in this proceeding a petition and supplemental letter requesting recision or waiver of the Commission's letter-order of February 11, 1966 or in the alternative, notice of withdrawal of its certificate application. On March 2, 1966, Cities Service Gas Company (Cities) also filed a petition requesting waiver of the same letter-order. Several answers were filed in support of petitioners; Ashland Oil & Refining Company (Ashland), Socony Mobil Oil Company, Inc. (Socony) and the staff of the Commission filed in opposition.

The contention of Arkla that our letter-order of February 11, 1966 is an "unprecedented direction" which should, therefore, be rescinded is without merit. The subject letter-order requires nothing more than compliance with Section 157.14 of the Commission's Rules and Regulations; as we have stated before, evidence submitted in support of a certificate application must at least comply with the requirements of this Section which sets forth the minimum evidentiary prerequisites. The submission of this data in evidence does not assure the grant of a certificate of public convenience and necessity, but is the foundation for the realistic evaluation of the significant aspects of most major projects.

Arkla further maintains that it cannot prepare the requested system-wide cost of service and revenue studies in less than three months, which would so delay this proceeding that it would be impossible to obtain authorization and construct the facilities in time to render service this coming winter when Cities needs the gas. Arkla points out that it believed Opinion No. 472, issued August 31, 1965 in *Transwestern Pipeline Company, et al.*, Docket No. G-20464, *et al.*, 34 FPC 659, only directed the submission of market and supply data in the supplemental hearing in Arkla's Docket Nos. CP64-125 and CP62-219, and, consequently, Arkla had prepared its case along these lines. We have re-examined Opinion No. 472 and find it was not clear as to the scope of the supplemental hearing and Arkla could very well have been misled to its detriment so that it does not now have sufficient time to prepare the cost of service and revenue studies. Consequently, in view of this unusual situation, we will waive the requirements of our regulations in this instance with respect to these studies (Paragraph Nos. 1 and 2 of our letter-order of February 11, 1966). However, this does not mean that we approve or accept Arkla's incremental cost of service and allocation methods, or its rate design, or every clause of its proposed tariff and contract, particularly the specific dedication and the limitation upon the full utilization of capacity which underlie Arkla's rate design and costing approach. It is not necessary to resolve possible controversy respecting these issues at this time but will make such determinations, to the extent necessary, when the proceeding is before us for decision. Our determinations on issues having rate significance at that time would not be binding in any future proceeding under Section 4 or 5 of the Act when Arkansas Louisiana would be required to submit more complete data including the type hereby waived. This, of course, is true in every certificate case before the Commission.

Ashland and Socony maintain that this consolidated proceeding involves the competitive issue of whether Cities' needs should be met from the Kansas-Hugoton Field or from Arkla, but this issue appears to be somewhat remote in view of the fact that Cities is seeking the necessary authorization to attach both supplies. The two projects are complementary and not mutually exclusive. If it should develop at the hearing that Cities' market is not great enough to absorb both supplies and a question then arises as to which should be certificated, any party who believes additional cost data is necessary may request it.

The revised deliverability schedule required by paragraph No. 3 of the letter-order must be submitted in order to determine whether Arkla has sufficient deliverability to meet the needs of its existing customers as well as Cities. The need for this data was clearly set out in Opinion No. 472. We realize that there are time considerations involved in the making of this study as well, but with some effort, we believe Arkla should be able to submit the schedule within three weeks from the date of this order and go forward with its application. Arkla shall submit within five days from the date of this order a statement of intent to comply with the terms of this order. Arkla's request to withdraw its application should be denied.

The Commission orders:

(A) The requirements of Sections 157.14(a)(18) and 157.14(a)(16) of the Commission's Rules and Regulations, as set out in the Commission's letter-order of February 11, 1966, paragraph Nos. 1 and 2, requiring Arkla to submit system-wide cost of service and revenues, expenses and income studies are hereby waived.

(B) Arkla shall submit the revised deliverability schedule as required by the Commission letter-order of February 11, 1966 within three weeks from the date of this order and shall submit within five days from the date of this order a statement of intent to comply herewith.

(C) Arkla's Notice of Withdrawal is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7277

ORDER AUTHORIZING ISSUANCE OF SHORT-TERM NOTES

(Issued April 4, 1966)

Iowa Southern Utilities Company (Applicant), filed an application on March 10, 1966, with the Federal Power Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of short-term promissory notes in the aggregate principal amount of not in excess of $20,000,000 outstanding at any one time.

Applicant is incorporated under the laws of the State of Delaware and is qualified to do business in the State of Iowa. It is engaged primarily in the generation, transmission and sale of electric energy in 24 counties in south central and southeast Iowa.

According to the application, Applicant intends to borrow from time to time up to but not exceeding $20,000,000 at any one time under a Revolving Credit Agreement between Continental Illinois National Bank and Trust Company of Chicago and the Applicant, dated March 18, 1966. Each borrowing is to be evidenced by a promissory note in an amount of $100,000 or a multiple thereof, which shall mature six months after its date, but not later than October 31, 1967.

Subject to the sale by the Applicant of $15,000,000 long-term debt securities and subsequent retirement of an equal amount of the then outstanding notes, on or before October 31, 1967, the bank has agreed, upon request by the Applicant, to renew the remaining balance of the then outstanding notes, not to exceed $5,000,000, and to establish a payment schedule of one-half such remaining balance on December 31, 1968, and the other remaining half on December 31, 1969. The Applicant states that the interest rate on the notes will not exceed the prime rate in effect at the time of borrowing on the first $15,000,000, and will not exceed ¼% above such rate on the balance.

According to the Applicant proceeds from the promissory notes will be used to finance the construction, extension and improvement of the Applicant's facilities during 1966, 1967 and 1968. The proposed facilities have a total estimated in place cost over the three year period of about $37,000,000. The principal item in the program is the construction of the Burlington Generating Station at an estimated cost of $24.5 million. Other items include the expenditure for transmission facilities in the amount of $2,318,400 and substations in the amount of $2,051,100.

We note that Applicant has included three items in the construction program which will require purchase of transmission facilities from neighboring utility systems.[1] Accordingly, this order will not authorize the use of funds from the promissory notes for the acquisition of these facilities until the Commission has approved their acquisition pursuant to Section 203 of the Federal Power Act.

Written notice of the application has been given to the Iowa State Commerce Commission and the Governor of that State. Notice has also been given by publication in the Federal Register on March 17, 1966 (31 F.R. 4532), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before March 29, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 1, 1963, *Iowa Southern Utilities Company*, Docket No. E-7103 (30 FPC 1).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, all as described above, will be in excess of 5% of the par

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[1] Applicant on March 28, 1966 in Docket No. E-7280 filed an application with this Commission for authority to acquire part of these facilities pursuant to Section 203 of the Federal Power Act.

value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonable, necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $20,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the applications, all as described above, is hereby authorized, subject to the provisions of this order.

(B) None of the proposed notes shall be issued to obtain funds for the acquisition of transmission facilities from Iowa Illinois Gas & Electric Company and Southwestern Federated Power Cooperative, Inc. described in the application prior to the issuance of an order issued pursuant to Section 203 of the Federal Power Act authorizing such acquisition.

(C) This authorization is expressly conditioned upon the final maturity of said notes in the amount of $15,000,000 being not later than October 31, 1967 and the final maturity of the balance of said notes not to exceed $5,000,000 being not later than December 31, 1969.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP63–32

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1966)

On February 4, 1966, Panhandle Eastern Pipe Line Company (Petitioner) filed in Docket No. CP63–32, 28 FPC 797, a petition to amend the certificate of public convenience and necessity issued in said docket on November 8, 1962, by extending the time during which Petitioner is authorized to construct and operate the facilities necessary to make an evaluation of prospective underground natural gas storage reservoirs, as more fully set forth in the petition to amend.

In the certificate issued on November 8, 1962, Petitioner was authorized to make maximum total and single project expenditures of $6,000,000 and $2,000,000, respectively, in a period of three years, to evaluate prospective reservoirs near its main transmission pipelines in western Indiana. Natural gas to be injected under the authorization was limited to 7,500 MMcf for the whole program and 2,500 MMcf for a single reservoir.

Petitioner has acquired leases by negotiation and has commenced preliminary evaluation ultimately leading to testing operations in several prospective structures. Petitioner states that these steps have consumed a considerable amount of time, due in part to the longer time required to obtain storage leases by negotiation instead of by condemnation. No injection of gas has taken place, although preparations for injection have begun. Petitioner now requests an additional two years to conduct the testing and development of the reservoirs.

Due notice of the filing of the petition to amend was published in the Federal Register on February 24, 1966 (31 F.R. 3090). No protest, petition to intervene, or notice of intervention has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 8, 1962, in Docket No. CP63-32 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued November 8, 1962, in Docket No. CP63-32 is amended by extending the time during which Petitioner may conduct the testing and development of the reservoirs to November 8, 1967, all as more fully set forth in the petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ST. CROIX PAPER COMPANY, PROJECT NO. 2492

ORDER ISSUING LICENSE (MAJOR)

(Issued April 4, 1966)

Application was filed on November 16, 1964 by St. Croix Paper Company (Applicant) of Woodland, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2492 known as the Vanceboro project, on the St. Croix River, (an international boundary stream in the vicinity of Vanceboro, Maine, United States and St. Croix, New Brunswick, Canada) at the outlet of Spednik Lake.

Applicant states that while there is an existing earth fill dam built over an old timber crib dam, deterioration of the crib timbers, leakage through the fill and downstream erosion, will necessitate the removal by Applicant of the existing dam and its replacement by a new dam to be located slightly upstream; and, in the circumstances, the application for license is for a proposed new dam and reservoir. The new dam, as does the existing one, will regulate the discharge of water from Spednik Lake into the St. Croix River for use in generating power at Applicant's Grand Falls hydroelectric power plant, about 25 miles downstream from the Vanceboro Project, and at Applicant's hydroelectric and hydro-mechanical power plant in the Woodland Pulp and Paper Mill, located about 12 miles downstream from the Grand Falls plant. The new dam and its reservoir is more fully described in paragraph (B) below.

The St. Croix River including its East Branch is approximately 100 miles in length and flows in a southeasterly direction into Passamaquoddy Bay. It forms part of the boundary between the State of Maine and New Brunswick, Canada and is therefore an international water. There is historical evidence of the extensive use of the St. Croix River for log driving from the time of settlement of the area. Such drives originating in the headwater reservoirs of the St. Croix, such as East Grand Lake and Mud Lake, were made downstream to its mouth in Passamaquoddy Bay. Dams were often built across the river for the purpose of impounding water temporarily to improve and regulate depths in the stream below to float logs. The storage in the principal reservoirs, of which Spednik Lake is one, was at one time controlled by the St. Croix Log Driving Company which maintained the dams and reservoirs for log drives down to Baring, Maine, at river mile 19 on the St. Croix. Later, these principal dams and reservoirs were acquired by the St. Croix Paper Company. Vanceboro Project No. 2492 is located on the St. Croix River at river mile 68.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory and have been approved pursuant to the provisions of Section 4(e) of the Act.

The Department of the Interior in reporting on the application has advised that the proposed project, if operated in the same general manner as the existing project, will not harm wildlife resources. The Department requested that the final drawings and specifications of the project fishway be subject to the approval of the Maine Department of Inland Fisheries and Game and the United States Fish and Wildlife Service. The Department of the Interior also requested that a minimum flow of 200 cfs be made below the dam until such time as the licensee, the Maine Department of Inland Fisheries and the Bureau of Sport Fisheries and Wildlife agree upon a schedule of minimum releases appropriate to maintain and develop fish resources. Applicant states that the requests of the Department of the Interior, included herein as Articles 31 and 32, are acceptable to it.

The Department of Health, Education, and Welfare has stated that no adverse effects are expected on water supply control, water pollution control or vector control and that the project should be beneficial for pollution control as its purpose is to provide low flow augmentation.

The State Park and Recreation Commission of the State of Maine in a letter to the Commission indicated that the Applicant's recreational development at the project is satisfactory and that there is no need to impose any license requirements regarding public access, public facilities or other recreational facilities at this time.

Applicant submitted an Exhibit R supplemental to its filing of application for license in which it indicates shoreline properties are rented to the public on an annual basis and that the public is given unrestricted use of Applicant-owned roads, together with the right to pass over its lands at will for purposes of recreation, fishing and hunting. Applicant's Exhibit R does not include plans for future recreational development in the project area. However, Applicant states that it maintains a policy of cooperation with State and Federal agencies when needs for such development are apparent. Since the Exhibit R submitted by Applicant does not conform to Commission regulations, a special license article is included herein to require the filing of a revised Exhibit R within one year of completion of the project.

Applicant has made application in accordance with the provisions of the Boundary Waters Treaty of 1909 to the International Joint Commission which has approved the project subject to certain conditions in an order issued October 15, 1965. In its order the International Joint Commission prescribed for Lake Spednik, a maximum surface water elevation of 385.86 ft. msl, minimum surface water elevations of 371.5 ft. msl between October 1 and April 30 and 376.5 ft. msl between May 1 and September 30 and a minimum discharge therefrom of 200 cfs.

By our order issued December 17, 1965, 34 FPC 1482, we denied a petition to intervene in this proceeding filed by Philip J. Hennessey III (Petitioner) for himself and on behalf of other property owners in the vicinity of Spednik Lake, and by our further order issued March 11, 1966, 35 FPC 372, we denied Petitioner's application for rehearing of our aforementioned order denying intervention.

The Commission finds:

(1) The portion of the St. Croix River within the United States is a navigable water of the United States and a stream subject to the jurisdiction of Congress as an international boundary water.

(2) The part of the Vanceboro Project No. 2492 within the United States is located in navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. Except for the above-mentioned petition to intervene, no protests or other petitions have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Upon the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development and for other beneficial public use, including recreational purposes.

(7) The amount of annual charges for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The exhibits described and designated in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to St. Croix Paper Company of Woodland, Maine under Section 4(e) of the Federal Power Act for a period of 50 years effective March 1, 1966, for the construction, operation, and maintenance of Project No. 2492, located on the St. Croix River, an International Boundary stream and navigable water of the United States, subject to the terms and conditions of the Federal Power Act which is incorporated by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2492 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States—such project area and project boundary being more specifically shown and described by certain Exhibits of the application for license which designated as follows:

Exhibit	FPC No.	Title
J sheet, 1 of 1	2492-1	Vanceboro Dam.
K sheet, 1 of 2	2492-3	Detail map.
K sheet, 2 of 2	2492-4	Detail map.

Article 34 is included requiring an additional Exhibit K drawing showing a plan of the dam and the area adjacent thereto in sufficient detail to accurately show the location of the International Boundary with respect to the dam.

(ii) project works as follows:

(1) A concrete section about 69 feet long, including (a) — a spillway section with two tainter gates (each about 22.5 feet long) and (b) — a fishway about 8 feet wide; (2) earth embankment at each end (total length about 400 feet); (3) a reservoir (the portion of Spednik Lake within the United States); and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit	FPC No.	Title
L (revised Aug. 26, 1965)	2492-2	Vanceboro Dam.

Exhibit M: consisting of a typewritten page entitled "General Description of Equipment", filed in the Commission November 16, 1964.

(Only those portions of the project located within the United States are included in the license).

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is subject to the terms and conditions set forth in Form L-4 (Revised June 1, 1964) entitled, "Terms and Conditions of License for

Unconstructed Project Affecting Navigable Waters of the United States", 32 FPC 839, which terms and conditions designated as Articles 1 through 29 are attached hereto and subject to the following special conditions set forth herein as additional articles:

Article 30. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act the Licensee shall pay the United States $50.00 per annum effective March 1, 1966.

Article 31. The Licensee shall construct, operate, and maintain or arrange for the construction, operation, and maintenance of such fish-passage and protective facilities as a part of the proposed Vanceboro project, as may be approved by the Commission upon the recommendation of the International Joint Commission following consultation with the Maine Department of Inland Fisheries and Game, and the United States Fish and Wildlife Service on final design drawings and specifications.

Article 32. Licensee shall consult with the Maine Department of Inland Fisheries and Game and the U.S. Bureau of Sport Fisheries and Wildlife on the effective operation of the project fish ladder and in the event it appears desirable in the interest of maintaining and developing the fishery resources of the St. Croix River, seek modification of water surface elevations of Lake Spednik or of flow release schedules at the dam as prescribed in the order of the International Joint Commission issued October 15, 1965, for which licensee shall make appropriate application to the International Joint Commission.

Article 33. The Licensee shall cooperate with Federal, State, and local agencies in the development of access roads and land areas and such other facilities necessary for full recreational utilization by the public of project lands and waters lying within the United States, consistent with the terms of the license and the operation of the project. Within one year following completion of the project, Licensee shall file for approval with the Commission a revised Exhibit R conforming to the requirements of Section 4.41 R of Regulations under the Federal Power Act.

Article 34. The Licensee shall, within six months from the date of completion of the project, file for Commission approval in accordance with the Commission's Regulations, Sections 4.41 and 4.42 under the Federal Power Act, an Exhibit "K" showing the dam and the adjacent area in sufficient detail to clearly define the project boundary and the location of the International Boundary. The International Boundary shall be referenced to the appropriate on-shore boundary reference monuments.

Article 35. In the design, construction, maintenance and operation of the Vanceboro project, the Licensee shall comply with all applicable provisions and requirements of the Order of Approval (International Joint Commission Docket No. 80) issued October 15, 1965, by the International Joint Commission for the construction of a storage dam in the St. Croix River at Vanceboro, Maine, and St. Croix, New Brunswick, as may be modified by further order of the International Joint Commission.

Article 36. The Licensee shall commence construction of the project works not later than March 1, 1967, and shall thereafter in good faith and due diligence prosecute such construction and shall complete construction of such works not later than December 1, 1967.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

SKELLY OIL COMPANY, DOCKET NO. RI60-253

ORDER REJECTING OFFER OF SETTLEMENT, AND DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued April 4, 1966)

Skelly Oil Company (Skelly) has filed an offer of settlement, and motion to terminate the above docketed proceeding which involves a proposed increase in rate, filed under Section 4(d) of the Natural Gas Act, from 11.0¢ to 16.8¢ for a sale of natural gas made by Skelly under its FPC Gas Rate Schedule No. 1 from its Velma Plant in Stephens County, Oklahoma to Lone Star Gas Company (Lone Star). The increased rate was filed on March 21, 1960, and was suspended for the statutory period. On June 16, 1964, Skelly made a 15¢ increased rate effective, subject to refund, and waived its right to make the full 16.8¢ increased rate effective.

Skelly proposes a settlement rate of 14.0¢ per Mcf to be effective until July 1, 1968, with periodic increases of 1.0¢ per Mcf on July 1, 1970, and every five years thereafter. It proposes to amend its contract with Lone Star so as to eliminate all indeterminate pricing provisions, including the favored-nation clause, and to extend the contract to June 30, 1984. Additionally, Skelly proposes to refund all monies collected subject to refund above the settlement rate.

Skelly cites our orders approving similar settlement offers in *National Fuels Corporation, et al.*, Docket No. G-20426, 33 FPC 1048 (order issued May 24, 1965) and *Warren Petroleum Corporation, et al.*, Docket No. G-20478, *et al.*, 33 FPC 1212 (order issued June 3, 1965) as precedents for approval of its proposal. The reasons set forth by Skelly for acceptance of its proposal are similar to those which caused us to approve the proposals in *National Fuels* and *Warren*. However, in *National Fuels* the proposal involved the only Section 4(e) proceeding it had pending, and in *Warren* we had before us a proposal made by four co-owners of the Garvin County plant complex, the majority owners having previously entered into company-wide settlements, exclusive of the Garvin County plants. Here, we have a proposal involving only one Section 4(e) proceeding concerning one sale made by Skelly while it has thirty-eight other rate proceedings now pending. Recognizing that twelve of such proceedings concern sales made in the Permian Basin, which are generally excluded from settlement proposals, we believe that an above-ceiling settlement rate should only be considered in the light of a company-wide settlement proposal.[1] Consequently, we shall reject Skelly's proposal, without prejudice to its being refiled as a part of a proposal which shall encompass all of its pending Section 4(e) proceedings, excluding those involving sales of natural gas in the Permian Basin.

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[1] The applicable increased price ceiling is 11.0¢ per Mcf, in accordance with the Statement of General Policy No. 61-1, 18 CFR 2.56.

The Commission orders:

The settlement proposal filed by Skelly is rejected, and its motion to terminate the proceeding in Docket No. RI60-253 is denied, without prejudice.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

TEXACO INC. (OPERATOR), ET AL., DOCKET NO. CI66-544

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FPC GAS RATE SCHEDULE AND SUPPLEMENT THERETO FOR FILING

(Issued April 4, 1966)

On December 27, 1965, Texaco Inc. (Operator), *et al.* (Applicant), filed in Docket No. CI66-544 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Eastern Transmission Corporation (Texas Eastern) for periods of limited duration from unspecified producing properties, all as more fully set forth in the application.

Applicant proposes to make short-term or spot sales of natural gas to Texas Eastern for periods of limited duration as may be agreed upon by Applicant and Texas Eastern from time to time over a period of twenty years. The proposed sales are to be made pursuant to the terms of a gas purchase contract between Applicant and Texas Eastern dated June 1, 1965. Applicant proposes to sell gas from leaseholds owned by Applicant and various co-owners. Gas will not be purchased from others for the subject sales. Because these will be short-term or spot sales, Applicant does not commit or dedicate to the contract any specific producing properties. Any deliveries will be at points on or near Texas Eastern's pipeline system which may be agreed upon in supplemental agreements. Applicant proposes to file each of the supplemental agreements as a supplement to its related FPC gas rate schedule for acceptance by the Commission. If the Commission does not accept the supplemental agreement and permit the same to become effective upon terms and conditions mutually agreeable to Applicant and Texas Eastern within thirty days from the filing date, the supplemental agreement will automatically terminate and be of no further force and effect, and the filing thereof will be withdrawn by Applicant if not theretofore rejected by the Commission.

The contract between Applicant and Texas Eastern provides that the supplemental agreements shall specify the quantity of gas to be sold and purchased; the price, which shall not exceed the then effective area price fixed by the Commission for the area from which deliveries are proposed to be made; and the duration of time for the proposed purchase. Applicant requests that the certificate authorize the subject sales for the specific periods of time set forth in the supplemental agreements.

On July 6, 1964, the Commission issued a certificate to Gulf Oil Corporation (Gulf) in Docket No. CI64-1122 authorizing sales by Gulf to Texas Eastern under circumstances similar to those proposed by Applicant. Like Applicant, Gulf had proposed to make unspecified short-term sales over a period of twenty years. However, the Commission limited the certificate to a period of five years, subject to renewal or extension at the termination thereof, due to the novelty and experimental nature of the authorization. Likewise, it is appropriate to limit Applicant's certificate to an initial five-year term, subject to renewal or extension at the termination thereof.

In granting the basic certificate at this time we believe that we should advise the parties that, in the absence of a showing of extraordinary circumstances, we will not approve supplemental filings for short-term sales, due to the spot nature thereof, at prices which are either above the purchaser's average cost of purchased gas or are not made at a realistic discount from the area ceiling for permanent certificates dedicating gas to the interstate market. Nor will we permit the procedure being instituted here to be abused by the establishment of any pattern of building up gas fields through short-term jurisdictional sales followed at termination by long-term non-jurisdictional sales. We recognize that at the termination of the short-term authorization Applicant will be free to renegotiate a permanent sale at any price at or below the appropriate area ceiling with Texas Eastern or any other purchaser, but we expect that such sales will normally fall into jurisdictional channels. Finally, we reserve the right to hold a formal hearing on any supplemental agreement in the event a protest thereto is filed. Of course, Applicant will be free to withdraw the supplemental filing under such circumstances.

As part of the certificate application. Applicant has submitted details of the first sale proposed to be made under the contract. Applicant proposes to sell an average of 6,000 Mcf of gas per day for a period of five years from the South Bosco Field, Acadia Parish, Louisiana, at 15.0 cents per Mcf at 15.025 psia.

After due notice no notice of intervention or protest to the granting of the application has been received. A petition for leave to intervene was filed by Public Service Electric and Gas Company on February 21, 1966, and was withdrawn on March 17, 1966. No further petitions for leave to intervene have been received.

At a hearing held on April 1, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texaco Inc. (Operator), *et al.*, is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicant, together with construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed in the supplemental agreement of June 30, 1965, relating to the sale of natural gas from the South Bosco Field, Acadia Parish, Louisiana, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant proposed in the supplemental agreement described above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate issued hereinafter should be limited to a term of five years, subject to renewal or extension upon expiration of the initial term upon a showing that the public convenience and necessity so require. Sales of natural gas made pursuant to supplemental agreements filed and approved during the effective period of the certificate issued hereinafter should continue for the unexpired portion of the term of such supplemental agreements.

The Commission orders:

(A) A certificate of public convenience and necessity limited to an initial term of five years from the date of issuance of this order is issued, upon the terms and conditions of this order, authorizing sales for resale in interstate commerce by Applicant on a short-term or spot-sale basis for the period of limited duration specified in each supplemental agreement, together with construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as Applicant and Texas Eastern may subsequently agree upon provided that such supplemental agreements (after being served on Texas Eastern's customers and the state commissions having jurisdiction over such customers) are filed with and approved by the Commission, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate issued in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) At the time of the filing of each supplemental agreement Applicant shall submit a statement showing (1) the total contract volumes of gas deliverable under earlier filed supplemental agreements and (2) the total volumes of gas delivered under such earlier filed supplemental agreements.

(D) The certificate issued in paragraph (A) above is subject to renewal or extension at the expiration of the initial term of five years upon a showing that the public convenience and necessity so require. Sales of natural gas made pursuant to supplemental agreements filed and approved during the effective period of the certificate issued in paragraph (A) above shall continue for the unexpired portion of the term of such supplemental agreement.

(E) The Contract dated June 1, 1965, is accepted for filing to be effective on the date of initial delivery and is designated as Texaco Inc. (Operator), *et al.*, FPC Gas Rate Schedule No. 366. The Supplemental Agreement dated June 30, 1965,[1] is accepted for filing to be effective on the date of initial delivery and is designated as Supplement No. 1 to the aforementioned rate schedule.

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[1] A filing of February 18, 1966, revises the billing statement and percentum of ownership of co-owners.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNION GAS SYSTEM, INC., AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66-219

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 4, 1966)

On January 5, 1966, Union Gas System, Inc. (Applicant) filed in Docket No. CP66-219 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Cities Service Gas Company (Respondent) to make a physical connection between its transmission facilities and Applicant's proposed facilities and to sell and deliver up to 40 Mcf of natural gas per day to Applicant for resale in the Pleasant Valley Road Area, Douglas County, Kansas, as more fully set forth in the application.

Applicant will construct, own and operate a natural gas distribution system in the community known as the Pleasant Valley Road Area, which has a population of approximately 65 and 19 residences. The distribution system and lateral pipelines will consist of 2-inch pipelines extending approximately 0.80 mile westward and 0.75 mile eastward from Respondent's 20-inch transmission pipeline and approximately 1,320 feet of 1¼-inch pipeline extending northward from the westward lateral.

The estimated annual and peak day requirements of natural gas for the area which is proposed to be served by Applicant are as follows:

Mcf	First year	Second year	Third year
Annual	1,837	2,338	3,006
Peak day	24	31	40

This proposed service will be rendered under Respondent's Rate Schedule F-2.

The estimated cost of construction of the facilities to be installed by Applicant is $9,868, which will be financed from treasury cash.

The Kansas State Corporation Commission certified the proposed service area to Applicant in its order issued October 20, 1965, in Docket No. 76,160-U.

Respondent filed an answer to the application on January 20, 1966, objecting to Applicant's request for separate delivery points for service under the instant proposal and under the proposal submitted by Applicant in Docket No. CP66-195 (requesting natural gas for resale and distribution in the Dreher Mobil Home Village, Douglas County, Kansas). This objection was withdrawn by Respondent's letter filed with the Commission on February 7, 1966. Respondent has no objection to the proposal.

Due notice of the filing of the application was published in the Federal Register on January 22, 1966 (31 F.R. 925). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicant is a public utility company in the State of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 40 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 40 Mcf of natural gas per day to Applicant, under Respondent's Rate Schedule F–2, for resale and distribution in the community known as the Pleasant Valley Road Area, Douglas County, Kansas, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in compliance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. CP66–35

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1966)

On July 30, 1965, United Fuel Gas Company (Applicant) filed in Docket No. CP66–35 an application together with supplementary data on October 25, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and regulating facilities, all as more fully set forth in the application.

Applicant seeks authorization for the construction and operation of 20.2 miles of 8-inch transmission pipeline extending northward from its existing 30-inch transmission line in Cabell County, West Virginia, to interconnect with its Point Pleasant distribution plant near Apple Grove in Mason County, West Virginia, for delivery of natural gas into the Point Pleasant distribution area.

The proposed facilities are needed to meet the increased requirements of the Pantasote Corporation, Stauffer Chemical Corporation and Goodyear Tire and Rubber Company and to provide the capacity for anticipated future growth in this Ohio Valley region. Estimated peak day and annual requirements are as follows:

Year	Peak day	Annual
1966	7,900	1,863,400
1967	9,900	2,085,500
1968	11,300	2,376,300

The total estimated cost of the proposed construction is $779,500, which Applicant proposes to finance through the issuance and sale of promissory notes and common stock to its parent company, the Columbia Gas System, Inc.

After due notice, the Public Service Commission of West Virginia filed a notice of intervention on August 27, 1965, and thereafter withdrew the same by letter dated September 14, 1965. No petition to intervene or protest to the granting of the application has been filed.

At a hearing held on April 1, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplementary data, and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application, supplementary data and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities, hereinbefore described and as more fully described in the application, supplementary data and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

BLUEBONNET GAS CORPORATION, DOCKET NO. CP66–252

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1966)

On February 2, 1966, Bluebonnet Gas Corporation (Applicant) filed in Docket No. CP66–252 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition, construction and operation of certain natural gas facilities and the transportation and sale of natural gas to Trunkline Gas Company (Trunkline) for resale, as more fully described in the application.

Applicant proposes to purchase volumes of natural gas from Erwin E. Grimes, Operator (Grimes), which gas is to be produced from the Cypress Creek Field, Newton County, Texas. The present estimate of reserves dedicated to Applicant by Grimes as of December 30, 1965, is 4,468 MMcf at 14.65 psia. Recoverable volumes from these reserves are estimated to be 3,339,750 Mcf. Applicant has scheduled the delivery of the reserves to Trunkline over a ten year period at an estimated rate of 1,000 Mcf per day for the first five years and at gradually declining rates during the second five year period. These deliveries will be made pursuant to the contract between Applicant and Trunkline dated January 18, 1966.

On January 24, 1966, Grimes filed an application in Docket No. CI66–640 for certificate authorization to sell the gas to Applicant. Our order authorizing the sale is being issued concurrently herewith.

To carry out the proposal, Applicant will acquire from Grimes approximately three miles of 3.5-inch O.D. pipeline to connect the Cypress Field production with Trunkline's 24-inch transmission system. Applicant will also construct the interconnection of the acquired facilities with Trunkline's pipeline. Trunkline will construct and operate the necessary metering and regulating facilities pursuant to its "budget-type" certificate authorization issued in Docket No. CP66–192 on March 14, 1966, 35 FPC 388.

Applicant estimates that the cost of acquiring the three miles of pipeline from Grimes will be $15,840, and the cost of constructing the interconnection will be $3,000, for a total of $18,840. Applicant is wholly owned by Lumar Gas Corporation (Lumar). Applicant will finance the cost of acquiring and constructing the facilities by issuing 18,800 shares of $1.00 par value common stock to Lumar.

Due notice of the filing of the application was published in the Federal Register on February 18, 1966 (31 F.R. 2907). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on April 1, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Bluebonnet Gas Corporation, a Texas corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 21, 1965, in Docket No. CP65–326 (33 FPC 1032).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition, construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Bluebonnet Gas Corporation authorizing the acquisition, construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3), and (e) of Section 157.20 of such Regulations.

(C) The facilities shall be acquired, construction of the interconnection completed, the facilities placed in actual operation, and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY AND MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66-220

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 5, 1966)

On January 5, 1966, Illinois Power Company (Applicant) filed an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Mississippi River Transmission Corporation (Respondent) to establish a physical connection between its natural gas transmission facilities and the facilities to be constructed by Applicant, to construct a sales meter station and to sell and deliver natural gas to Applicant for resale and distribution in the communities of Ruma and Evansville, Randolph County, Illinois, and environs, as more fully set forth in the application.

Applicant will construct and operate 10 miles of 3-inch lateral pipeline from the proposed new tap on Respondent's interstate transmission line near Prairie du Rocher, Illinois, to the villages of Evansville and Ruma, and will construct and operate the individual gas distribution systems in Evansville and Ruma.

The estimated requirement of natural gas, which is to be used for residential and commercial purposes, is as follows:

	Mcf					
	Ruma		Evansville		Total	
	Peak day	Annual	Peak day	Annual	Peak day	Annual
First year	138	13,985	265	24,441	403	38,426
Second year	159	15,355	342	30,353	501	45,708
Third year	173	16,722	388	35,350	561	52,072

Applicant will serve these new customers from existing contract demand, so no additional volumes will be required from Respondent.

The estimated cost of the facilities to be constructed by Applicant is $227,075, which will be financed from currently available funds. Applicant estimates the cost of Respondent's sales meter station to be $9,350.

Applicant obtained franchises for natural gas service from Ruma and Evansville on October 4, 1965. A certificate of public convenience and necessity was issued on December 20, 1965, by the Illinois Commerce Commission authorizing Applicant to construct and operate the proposed facilities and to perform the proposed service.

By letter dated January 10, 1966, Respondent was notified of the filing of the application and furnished a copy thereof. No answer has been received from Respondent.

Due notice of the filing of the application was published in the Federal Register on January 22, 1966 (31 F.R. 922). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Respondent, Mississippi River Transmission Corporation, a Delaware corporation with its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) Applicant is a public utility company legally engaged in the local distribution of natural gas to the public in the State of Illinois.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, to construct and operate a sales meter station at the proposed interconnection, and to sell and deliver up to 561 Mcf of natural gas per day to Applicant through the interconnection, as hereinbefore described and as more fully described in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant, to construct and operate a sales meter station at the point of interconnection, and deliver through the point of interconnection up to 561 Mcf of natural gas per day, from existing contract demand, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 30 days thereof.

(D) Respondent shall execute and file with the Commission an amended service agreement in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

THE MONTANA POWER COMPANY, DOCKET NOS. G-17370, G-17371

ORDER DENYING APPLICATION FOR REHEARING

(Issued April 5, 1966)

On February 8, 1966, 35 FPC 191, the Commission issued Opinion No. 486 and accompanying order in the above-entitled proceeding. Application for rehearing of this Opinion and order has been timely filed under Section 19 of the Natural Gas Act by the Independent Petroleum Association of America (applicant or IPAA), an intervener and party in this proceeding.

In Opinion No. 486 and order we authorized The Montana Power Company (Montana Power), subject to certain specified conditions, to increase its previously authorized imports of natural gas from Canada into the United States by an average of 10,000 Mcf per day commencing on or about November 1, 1966, and by an average of 20,000 Mcf per day commencing on or about November 1, 1967, at a point of interconnection on the International Boundary as described in the application filed in Docket No. G-17371. We also found that the Presidential Permit issued to The Montana Power Company on September 19, 1960, in Docket No. G-17370, sufficiently provided for the additional imports of gas proposed and that no amendment or additional Permit was required.

Applicant requests that we grant rehearing and thereafter modify our Opinion and order, alleging that we have erred (1) in relying upon standards and guidelines which were formulated prior to the Mandatory Oil Import Program and which are now in conflict with such Program; (2) in failing to recognize that the Mandatory Oil Import Program created a new consideration to be dealt with in Section 3 cases; and (3) in failing to give consideration to the high degree of dependency of Montana consumers upon foreign source fields.

The arguments advanced here by IPAA are essentially the same as those advanced in its brief to the examiner and rejected by us in our Opinion. No new facts or arguments are called to our attention which would be cause for granting rehearing or disturbing the original Opinion and order.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the above-described application for rehearing present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 486 and accompanying order on February 8, 1966, or which having now been considered warrant any change or modification of said Opinion and order.

The Commission orders:

The application for rehearing filed by the applicant, Independent Petroleum Association of America, on March 8, 1966, is hereby denied.

Chairman White *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 2334

ORDER APPROVING EXHIBIT R FOR PROJECT

(Issued April 5, 1966)

On July 13, 1965, Western Massachusetts Electric Company, Licensee for constructed Project No. 2334, filed for Commission approval a recreational use plan for the project. The plan was filed pursuant to Article 30 of the license.

The project, known as the Gardners Falls Project, is located on the Deerfield River in the Towns of Buckland and Shelburne, in Franklin County, Massachusetts.

The recreational use plan, consisting of a map identified as Exhibit R (FPC No. 2334–10) and a written text identified as Exhibit R–1, shows present and proposed recreational uses of the project.

The Department of the Interior, the Department of Health, Education, and Welfare, and the Department of Natural Resources of the Commonwealth of Massachusetts, have reported favorably on the recreational use plan.

The Commission finds:

The following designated and described recreational use plan for the project should be approved as part of the license for the project:

Exhibit R—One sheet (FPC No. 2334–10).
Detail Map of Proposed Recreational Use of Project Area.
Exhibit R–1 (Brochure) entitled: "Recreational Use Plan."

The Commission orders:

The recreational use plan for Project No. 2334, designated and described in the above finding, is hereby approved as part of the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ACCOUNTING FOR MEASURING AND REGULATING STATIONS—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR CLASSES A, B, AND C NATURAL GAS COMPANIES, DOCKET NO. R–292

ORDER NO. 320

AMENDING GAS PLANT INSTRUCTIONS AND NOTES TO ACCOUNTS 369 AND 379

(Issued April 6, 1966)*

The Commission in this order is amending the Uniform System of Accounts applicable to Classes A, B, and C natural gas companies so as to eliminate the instruction permitting optional accounting for measuring and regulating stations as either a transmission or distribution plant item. Although the elimination of the option now permitted is in keeping with sound uniform accounting practices, the primary purpose of the amendments is to clarify the eligibility of the property concerned with respect to the investment tax credit percentage to be allowed. The existence of the option in the systems of accounts has posed a problem for the Internal Revenue Service because the Internal Revenue Code, as amended in 1962 and 1964 (26 U.S.C. 38, 46(a), 46(c)) provides, in effect, that transmission plant acquisitions would be allowed a 7 percent credit and distribution plant would be allowed a 3 percent credit.

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* Published in the Federal Register on April 13, 1966 (31 F.R. 5689).

On November 2, 1965, we issued a Notice of Proposed Rulemaking in this proceeding, published it in the Federal Register on November 9, 1965 (30 F.R. 14110) and, thereby, invited the submission of comments with respect to the proposal. Six responses were received.** There were no objections in principle to the proposals although several argued that mere deletions from the existing instructions, as proposed, rendered them unclear and suggested amendatory language. We recognize the merit of the points raised and, although we do not adopt the precise language changes suggested, we believe that the amendments here prescribed will make clear our original intention to require pipeline companies, including those which measure deliveries to their own distribution systems, to classify the equipment in the transmission function, but to make no change in the present classification of the equipment by distribution companies in the distribution function.

The Commission therefore finds:

In view of the foregoing, it is necessary and appropriate for the administration of the Natural Gas Act that the amendments to the Uniform System of Accounts proposed in the notice of proposed rulemaking heretofore issued in this proceeding be revised and, as so revised, now be prescribed.

The Commission, acting pursuant to the authority of the Natural Gas Act, as amended, particularly sections 8 and 16 thereof (52 Stat. 825, 830; 15 U.S.C. 717g, 717o), *orders:*

(A) The Uniform System of Accounts, prescribed for Class A, B, and C natural gas companies by Part 201 and Part 204, respectively, of Subchapter F, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

1. Gas Plant Instruction 14.A. in Part 201 and 12.A. in Part 204 are amended by deleting the last sentence from each and inserting, in lieu thereof, the following:

> Pipeline companies, including those companies which measure deliveries of gas to their own distribution systems, shall include city gate and main line industrial measuring and regulating stations in the transmission function.

2. In the second sentences of the Gas Plant Instruction 14.A. and 12.A. delete the words "inlet side" appearing in each and insert, in lieu thereof, the words "outlet side".

3. Gas Plant Instruction 14.B. in Part 201 and 12.B. in Part 204 are amended by deleting the last two sentences from each and inserting, in lieu thereof, the following:

** Michigan Gas Storage Company; National Fuel Gas Company on behalf of Iroquois Gas Corporation, Pennsylvania Gas Company and United Natural Gas Company; Northern Natural Gas Company; Pacific Gas and Electric Company; Pacific Gas Transmission Company; Public Service Electric and Gas Company.

> The distribution system owned by companies having no transmission facilities connected to such distribution system begins at the inlet side of the distribution system equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. For companies which own both transmission and distribution facilities on a continuous line, the distribution system begins at the outlet side of the equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. The distribution system does not include storage land, structures, or equipment.

As so amended, paragraphs A. and B. of Gas Plant Instruction 14. in Part 201; and paragraphs A. and B. of Gas Plant Instruction 12. in Part 204 will read as follows:

Gas Plant Instructions

* * * * * * *

14.[12.] *Transmission and distribution plant.* For the purposes of this system of accounts:

A. "Transmission System" means the land, structures, mains, valves, meters, boosters, regulators, tanks, compressors and their driving units and appurtenances, and other equipment used primarily for transmitting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas, to one or more distribution areas. The transmission system begins at the outlet side of the valve at the connection to the last equipment in a manufactured gas plant, the connection to gathering lines or delivery point of purchased gas, and includes the equipment at such connection that is used to bring the gas to transmission pressure, and ends at the outlet side of the equipment which meters or regulates the entry of gas into the distribution system or into a storage area. It does not include storage land, structures or equipment. Pipeline companies, including those companies which measure deliveries of gas to their own distribution systems, shall include city gate and main line industrial measuring and regulating stations in the transmission function.

B. "Distribution System" means the mains which are provided primarily for distributing gas within a distribution area, together with land, structures, valves, regulators, services and measuring devices, including the mains for transportation of gas from production plants or points of receipt located within such distribution area to other points therein. The distribution system owned by companies having no transmission facilities connected to such distribution system begins at the inlet side of the distribution system equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. For companies which own both transmission and distribution facilities on a continuous line, the distribution system begins at the outlet side of the equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. The distribution system does not include storage land, structures, or equipment.

4. In the "Note" appended to the text of Accounts 369 and 379 contained in both Part 201 and Part 204, delete the "exception" clause in each and amend the Note to read as follows:

Gas Plant Accounts * * *

369 (379) Measuring and regulating station equipment.

* * * * * * *

Note: Pipeline companies, including companies who measure deliveries of gas to their own distribution system, shall include in the transmission function classification city gate and main line industrial measuring and regulating stations.

[Secs. 8, 16, 52 Stat. 825, 830; 15 U.S.C. 717g, 717o.]

(B) The amendments here prescribed shall be effective May 6, 1966.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PLACID OIL COMPANY, ET AL., G-13183, ET AL.; THE SUPERIOR OIL COMPANY, G-16380, G-16388; CALLERY PROPERTIES, INC., G-17340, G-17341; UNITED GAS PIPE LINE COMPANY, RP65-15; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65-31; CONSOLIDATED GAS SUPPLY CORPORATION, RP66-23

ORDER DENYING MOTIONS FOR ESCROW OF REFUNDS TO STOP INTEREST, REQUIRING REPORTS OF INTENDED DISPOSITION, AND REQUIRING RETENTION OF REFUNDS

(Issued April 6, 1966)

On February 11, 1966, The Superior Oil Company (Superior) filed a motion for escrow of refund amounts to stop further interest liability in the above-named dockets. On February 14, 1966, Callery Properties, Inc., (Callery) submitted a motion seeking the same result. Answers in opposition to these motions were filed by the Public Service Commission of the State of New York, United Gas Improvement Company, Consolidated Gas Supply Corporation, and Transcontinental Gas Pipe Line Corporation.

Movants allege that orderly procedure would seem to require that this Commission would wish to order distribution as a single refund of refund amounts required pursuant to paragraph (D) of Opinion No. 398, 30 FPC 283, and the amounts accumulated pursuant to the order of the Fifth Circuit Court of Appeals, dated October 17, 1963, which stayed the order in Opinion No. 398. Superior states that those funds are yet to be disposed of by appropriate order of that court and that "such order will probably be deferred pending disposition by the Fifth Circuit Court of any further issues originally raised before it and not now resolved by it or the reversing opinion of the Supreme Court."

On March 29, 1966, the Fifth Circuit Court of Appeals issued an order affirming our Opinion No. 398, as amended in Opinion No. 398-A, 30 FPC 682, "in all things", and dissolving the stay which it had entered on October 17, 1963.

As a result of the Court's order of March 29, the matter of refunds is now before this Commission. Under ordering paragraph (D) of the Commission's Opinion No. 398-A, movants are required to make refunds, including interest, within 30 days of the order being finally effective. Accordingly, refunds should be made within such time by the producers involved in the proceeding.

There remains, however, a question whether further action is required with regard to these refund amounts. In view of the fact that there is no assurance that the refunds received by the jurisdictional customers of certain of the pipeline companies in turn will be flowed through to their distribution customers for appropriate disposition pursuant to appropriate State Commission order, we have in prior cases required that such pipelines retain refund amounts, pending further order of the Commission directing disposition of those amounts. The purpose of such action by the Commission has been to determine whether the pipeline's immediate customer or the customers of such customers are legally entitled to such refunds.[1]

Similarly, in this proceeding we are concerned that the pipeline purchasers have an obligation to flow through to their customers in an appropriate manner, those refunds received from Superior and Callery.[2] We are not assured that each of the customers of these pipelines subject to our jurisdiction will in turn flow through the refunds which are received from the producers herein. Accordingly, we deem it necessary to require that certain of the refunded amounts be held by the pipeline recipients of the refunds from the producer until such time as it is finally determined whether their pipeline customers who have not indicated they will flow such refunds to their customers (or are not obligated to do so by Commission order) or the jurisdictional customers of such pipeline (either on their own behalf or as trustees for their customers) are equitably entitled thereto.

Because of the considerations discussed above, we are ordering Transcontinental Gas Pipe Line Corporation (Transco) and United Gas Pipe Line Company (United) to retain subject to further order of the Commission those portions of the refunds to be received from Superior[3] which are attributable to purchases by specified companies subject to our jurisdiction. Provision is also made below for the retention subject to further Commission order of amounts attributable to jurisdictional sales which Transco or United might maintain that they are not required to flow through.

Since Hope Natural Gas Company (Hope) has merged into Consolidated Gas Supply Corporation (Consolidated),[4] amounts refundable by Callery to Hope will be received by Consolidated, which has assumed the obligations of Hope with respect to these amounts. We are ordering Consolidated to retain the refunds by Callery,[5] pending approval of Consolidated's plan of disposition.

The Commission orders:

(A) The motions for escrow of refund amounts filed by Superior and Callery on February 11, 1966 and February 14, 1966, respectively, are denied. The disposition of the amounts to be refunded by Superior and Callery shall be in accordance with this order as provided hereinafter.

(B) Superior and Callery are hereby directed to proceed with distribution of the amounts to be refunded (including earnings, if any, on the Court of Appeals' escrow account) in accordance with paragraphs (D), (E) and (F) of Opinion No. 398 and Paragraph (D) of Opinion No. 398-A. Interest on amounts attributable to sales prior to August 16, 1963 shall be computed through the date of distribution. Pursuant to the order entered March 29,

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[1] *Cf. Texas Eastern Transmission Corporation* v. *F.P.C.*, 357 F. 2d 232 (CA5–1966).

[2] Although Opinion No. 398 indicated that each of the pipelines has an obligation, under its settlement agreement, to pass on all refunds, including interest, there may be some argument on this question in view of the dates under which these sales were made. Since we believe all refunds should be passed on, where appropriate, we will condition this order in the manner hereinafter set forth.

[3] Including amounts held in escrow pursuant to order of the Court of Appeals.

[4] Opinion No. 448, 33 FPC 150.

[5] *Op. cit. supra*, note 4.

1966 by the United States Court of Appeals for the Fifth Circuit, the Commission orders that the disposition of all amounts to be refunded by Superior and Callery shall be as provided herein, whether held by the producer itself or in escrow as ordered by the Court of Appeals.

(C) Transco and United shall file within 30 days after receipt of the refund from Superior described above a report of their intended disposition of the amounts refunded by Superior. The report shall describe in detail the amount payable to each jurisdictional customer, the bases used in computing the amount payable, the periods involved, and the relevant docket numbers. The report shall also show clearly the amount of the refund by Superior which is attributable to non-jurisdictional sales by Transco or United and any amount attributable to jurisdictional sales by Transco or United which they do not intend to flow through to their respective customers. The report should be accompanied by a brief statement of the reasons for Transco's or United's position, if any, that there is no obligation to flow through such amount attributable to jurisdictional sales. Copies of the reports required herein shall be served by Transco and United on their customers and interested state commissions. Except as provided hereinafter, and unless notified to the contrary by the Secretary within 30 days after the reports are filed, Transco and United may proceed to distribute the amounts shown in their respective reports, in the manner provided in relevant settlement agreements and orders, at any time after the time for such notice from the Secretary has expired.

(D) United shall retain subject to further order of the Commission, in accordance with the methods described in Paragraph (H) below, those portions of the refund by Superior which are attributable to purchases from United by:

1. Mississippi River Transmission Corporation
2. Mississippi River Fuel Corporation
3. Natural Gas Pipeline Company of America
4. Southern Natural Gas Company
5. Texas Eastern Transmission Corporation
6. Texas Gas Transmission Corporation

(E) Transco shall retain subject to further order of the Commission, in accordance with the methods described in paragraph (H) below, those portions of the refund by Superior which are attributable to purchases from Transco by:

1. Atlantic Seaboard Corporation
2. Eastern Shore Natural Gas Company
3. The Manufacturers Light and Heat Company
4. New York State Natural Gas Corporation
5. North Penn Gas Company
6. United Natural Gas Company

(F) Transco and United shall also retain subject to further order of the Commission, in accordance with the methods described in paragraph (H) below, any and all portions of the refund by Superior which are attributable to jurisdictional sales by Transco or United, with respect to which Transco or United may claim they are not obligated to flow through to their respective jurisdictional customers.

(G) Consolidated is hereby ordered to retain amounts refunded by Callery in accordance with the provisions of this paragraph. Consolidated shall submit within 30 days after receipt of the refunds a report showing its intended disposition of the money. The report shall set forth in detail the amounts to be refunded to each customer, the periods involved, and the relevant docket numbers. Such report shall be served upon each customer and interested state commissions. If Consolidated claims a right to retain any amounts attributable to jurisdictional sales, a brief statement of the justification for such retention shall be included. Upon notification by the Secretary that the report constitutes a satisfactory plan of disposition, Consolidated shall proceed with distribution of the refunds to its customers.

(H) The amounts ordered to be retained pursuant to paragraphs (D) through (F) shall be retained by the respective pipeline under the following methods. The choice of method is optional to the pipeline required to retain the funds, but notice of the pipeline's choice of methods shall be served within 30 days after the date of this order:

1. Commingled with its general assets but interest at 5 percent per annum shall be paid from the date the funds would flow-through, if not so retained, to the date on which they are paid to the person ultimately determined to be entitled thereto by a final order of the Commission.

2. Deposited in a special escrow account on or before the date the funds would flow-through, if not so retained. If the fund is deposited in such an escrow account, the following conditions must be met:

(a) The retaining party shall submit, at least 45 days prior to the date the funds are to be deposited, an executed escrow agreement conditioned as set out below with a certificate showing service on the party to whom the fund would otherwise be payable. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between retaining party and any bank or trust company used as a depository for funds of the United States Government and the agreement shall be conditioned as follows:

(b) The retaining party, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(c) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(d) Such bank or trust company shall be liable only for such interest as the invested funds described in Subparagraph (c) above will earn and no other interest may be collected from it.

(e) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(f) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-243

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 8, 1966)

On January 28, 1966, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-243 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to The Washington Water Power Company (Water Power), an existing customer, for transportation to and resale and general distribution in the community of Medical Lake, Washington, and environs, all as more fully set forth in the application.

Deliveries of natural gas to Water Power will be made at the outlet of Applicant's existing Eastern State Hospital and Lakeland Meter Station, and no additional facilities are to be constructed by Applicant. Water Power will transport the gas to the point of resale and distribution in the community of Medical Lake, Washington.

Applicant estimates that the proposed service will require third year peak day and annual requirements of 277 Mcf and 29,368 of natural gas, respectively. These proposed sales to Water Power will be initiated on a firm basis in accordance with the applicable service agreement then in effect between Applicant and Water Power and at rates contained in Applicant's Rate Schedule DS-1, FPC Gas Tariff, Original Volume No. 3.

Applicant states that if the instant application is approved prior to the grant of authorization sought by it in its filing in Docket No. CP66-27, the service embraced by the instant application will be divested by Applicant to Northwest Pipeline Corporation (Northwest), pursuant to the proposal in the application in Docket No. CP66-27 and the complementary filing by Northwest in Docket No. CP66-28. Those filings contemplate the divestiture of certain facilities and service by Applicant to Northwest.

Due notice of the filing of the application was published in the Federal Register on February 16, 1966 (31 F.R. 2800). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on April 7, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed sale of increased volumes of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be a sale for resale in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of increased volumes of natural gas, as proposed in the application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the sale of increased volumes of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) The sale of increased volumes of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) Applicant shall file a revised service agreement with Water Power to include the community of Medical Lake, Washington, under Applicant's Rate Schedule DS–1, FPC Tariff, Original Volume No. 3, to reflect the deliveries herein authorized pursuant to Section 154.22 of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66–187

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 8, 1966)

On December 6, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66–187 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 600 Mcf of gas per day under its FPC Gas Rate Schedule CD–3 to Elizabethtown Consolidated Gas Company (Elizabethtown) and a corresponding decrease of 600 Mcf per day in its FPC Gas Rate Schedule G–3 allocation to The Manufacturers Light and Heat Company (Manufacturers) at the New Village, New Jersey, delivery point, all as more fully set forth in the application in this proceeding.

Applicant's present allocation to Manufacturers at New Village is 2,000 Mcf per day under permanent certification and 1100 Mcf per day under a temporary certificate issued in Docket No. CP65-181. At this location, Manufacturers presently serves the requirements of City Gas Company of Phillipsburg, New Jersey (City Gas). The present CD-3 allocation of Elizabethtown is 46,551 Mcf per day, 2,000 Mcf of such amount having been authorized pursuant to a temporary certificate issued in Docket No. CP65-181.

Applicant states that in September 1965, City Gas was merged into Northwest Jersey Natural Gas, Inc. (Northwest), a wholly-owned subsidiary of Elizabethtown, and that Elizabethtown has undertaken a program of integrating the pipeline gas supplies of Northwest with those of Elizabethtown in order to obtain maximum system flexibility, fullest utilization of pipeline supplies, and lowest system costs. In order to assist Elizabethtown in achieving these objectives, Manufacturers has agreed to relinquish to Elizabethtown 600 Mcf of gas per day of its permanently certificated allocation from Applicant at New Village. Elizabethtown will supply this 600 Mcf per day to Northwest at New Village by an increase in like amount in its firm CD-3 allocation from Applicant. Applicant will provide a new delivery point to Elizabethtown at New Village; no new facilities will be required for the new delivery point since deliveries will be made through the existing metering station used for deliveries to Manufacturers.

The proposed arrangements have been made pursuant to an agreement, dated November 23, 1965, among Manufacturers, Elizabethtown and Northwest.

By letter, dated January 13, 1966, Applicant was issued a temporary certificate authorizing the subject proposals.

Several petitions to intervene in support of the subject application have been filed herein. None of said petitions requests formal hearing or objects to the hearing and disposition of the proceeding under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 7, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(2) The subject sale and delivery of natural gas and the subject decrease in Applicant's allocation of natural gas to Manufacturers are subject to the jurisdiction of the Commission and to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The subject sale and delivery of natural gas and the subject decrease in Applicant's allocation of natural gas to Manufacturers are required by the

public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell and deliver an additional 600 Mcf of natural gas per day to Elizabethtown and to decrease a corresponding 600 Mcf of natural gas per day in Applicant's allocation to Manufacturers at the New Village, New Jersey, delivery point, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNION OIL COMPANY OF CALIFORNIA, DOCKET NOS. G-3711 AND RI60-450

ORDER REJECTING OFFER OF SETTLEMENT, AND DENYING PETITION TO AMEND CERTIFICATE

(Issued April 8, 1966)

On January 21, 1966, Union Oil Company of California (Union) filed related proposals regarding a sale of natural gas made by it to United Gas Pipe Line Company (United) in the Houma Field, Terrebonne and Lafourche Parishes, Louisiana, under Union's FPC Gas Rate Schedule No. 49. Union proposes to reduce its currently effective rate to United, which is being collected subjected to refund, from 23.25¢ to 18¢ per Mcf of natural gas at 15.025 psia. The currently effective rate has been charged and collected by Union since December 2, 1960, and it proposes to refund all monies so collected, subject to refund, above the settlement rate since that date. Union also proposes to dedicate 470 additional acres to its contract with United. However, it proposes to amend the certificate of public convenience and necessity issued to it in Docket No. G-3711, as regards the subject sale to United, so as to delete all horizons below that which it avers are presently known to be productive of natural gas. Union proposes such certificate amendments contingent upon approval of the settlement rate.

The Philadelphia Gas Works Division of the United Gas Improvement Company filed, on February 2, 1966, an opposition to Union's proposal on the ground that as a settlement proposal involving a single sale and rate schedule it was "entirely unsatisfactory".

On April 4, 1966, we issued an order in *Skelly Oil Company*, Docket No. RI60–253, *supra*, p. 463 at p. 463 wherein we stated that "* * * we believe that an above-ceiling settlement rate should only be considered in the light of a company-wide settlement proposal." Here, we have a proposed rate of 18¢ per Mcf of natural gas, and an applicable area increased rate ceiling of 15.75¢ per Mcf. We find no cause or reason to depart from the principle we spelled out in *Skelly*, and we shall therefore reject Union's proposal. The rejection is without prejudice to the submittal of a proposal encompassing all of Union's pending Section 4(e) proceedings, excluding those sales of natural gas in the Permian Basin.

In view of our disposition of this matter, we see no need at this time to determine the propriety of either the proposed settlement rate or the request for certificate amendment. Our action here is therefore without prejudice to any action we may take in the future in the event the subject proposal is incorporated in a company-wide settlement offer.

The Commission orders:

The settlement proposal filed by Union is rejected, and the petition to amend its certificate in Docket No. G–3711, having been made contingent upon approval of said proposal is moot, without prejudice as hereinabove stated.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. G–12569

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 8, 1966)

On October 5, 1965, United Gas Pipe Line Company (United) filed in Docket No. G–12569, as supplemented on January 11, 1966, a motion to amend further the Commission's order issued August 23, 1957, 18 FPC 222 in said docket, as amended, to authorize United to transport and deliver up to 22,000 Mcf of natural gas per day to Coastal Chemical Corporation (Coastal), in lieu of the presently authorized 20,000 Mcf per day, and to change the sale to Coastal from interruptible to firm, all as more fully set forth in the motion to amend in this proceeding.

The order of August 23, 1957, authorized United, among other things, to construct and operate certain facilities and to transport and deliver up to 1000 Mcf of natural gas per day, on an interruptible basis, to Coastal for use by the latter in its chemical plant in Jackson County, Mississippi. By subsequent orders United was authorized to increase deliveries to Coastal; the presently authorized volume is 20,000 Mcf per day. United now requests that the presently authorized volume of 20,000 Mcf per day be increased to 22,000 Mcf per day. No increase in annual volumes is contemplated.

The order of August 23, 1957, and the subsequent amendatory orders in this docket have described the sale by United to Coastal as being interruptible. The contract between United and Coastal provides that, in the event of a gas shortage, the requirements of United's gas utilities customers selling gas to domestic consumers and United's public utility power customers using gas for generation of electricity which is sold to domestic consumers shall first be supplied by United. Since impairment of deliveries to Coastal may occur only under the emergency conditions set forth above, the subject sale is firm and has been so treated by United. Further, United states that it has never curtailed deliveries to Coastal since service began in 1958. Accordingly, United requests that the subject sale, described as interruptible in the order of August 23, 1957, and in the subsequent amendatory orders, be changed to firm.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 19, 1965 (30 F. R. 13299). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 23, 1957, in Docket No. G-12569, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 23, 1957, in Docket No. G-12569, as amended, is further amended to authorize United to transport and deliver up to 22,000 Mcf of natural gas per day to Coastal, in lieu of the 20,000 Mcf per day heretofore authorized in this docket, and to change the sale by United to Coastal from interruptible to firm, all as hereinbefore described and as set forth in the motion to amend, as supplemented.

(B) This amended certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increase in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(C) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, ET AL.,
DOCKET NO. CP64-211, ET AL.

ORDER EXTENDING TIME FOR CONSIDERATION OF RATE SCHEDULE-QUALITY STATEMENTS

(Issued April 11, 1966)

On January 6, 1966, the Commission issued its Opinion No. 484, 35 FPC 40, and accompanying order in the above-entitled proceeding. Among other things this order required each producer-applicant in this proceeding, other than Socony Mobil Oil Company, Inc., to file with the Commission a Rate Schedule-Quality Statement for each contract of such producer-applicant subject to this proceeding. Subparagraph (2) of paragraph (I) of said order provided that a statement so filed should be deemed accepted by the Commission unless the Commission should otherwise order within 60 days after such filing. Said subparagraph (2) also provided that whereas the Commission determines that "the statement filed is inconsistent with the provisions of ordering paragraph (B) of Opinion No. 468, as modified by Opinion No. 468–A, 34 FPC 159, 1068, the Commission will, after appropriate proceedings, prescribe the applicable area rate to be applied * * *."

The statements which have been filed by the producer-applicants are not consistent with the provisions of ordering paragraph (B) of Opinion No. 468, as modified by Opinion No. 468–A. Said paragraph (B), as modified, sets forth the adjustments which are to be made to the area base rate in computing the rate which shall be applicable to gas sold under a particular contract. The only upward adjustment allowed is for Btu content in excess of 1050. The quality statements here submitted do not conform to the provisions of said paragraph (B) as modified. Said quality statements include an upward adjustment for delivery of gas at pressure substantially in excess of the minimum pressure standard established for the Permian Basin. This is not proper. No credit can be allowed for delivery of gas above minimum pressure, either to cause an upward adjustment in the base area rate or to offset quality deficiencies of a different nature. In our determination as to whether such quality statements are otherwise acceptable, no consideration will be given to the proposed credits for pressure. In order to permit additional time for consideration of the quality statements so far submitted, the period for consideration of these quality statements will be extended to June 6, 1966.

The Commission orders:

(A) The time for consideration by the Commission of the Rate Schedule-Quality Statements heretofore filed by the producer-applicants in this proceeding is extended to June 6, 1966, or such later time as the Commission shall fix by later order.

(B) No consideration will be given to the credits for pressure proposed in the quality statements tendered herein in determining whether such quality statements are otherwise acceptable.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66–261

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1966)

On February 7, 1966, Mississippi River Transmission Corporation (Applicant), filed in Docket No. CP66–261, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization to install during the year commencing April 1, 1966, and ending March 31, 1967, and operate additional compressor capacity in the Woodlawn Field, Harrison County, Texas, having up to 750 horsepower in the aggregate.

The proposed compressor facilities are required in order to enable Applicant to maintain deliverability from dedicated reserves in the face of continued pressure declines in the field and individual wells.

The total estimated cost of Applicant's proposed construction is $132,625, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 7, 1966. the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60–95 (24 FPC 1020, 1038).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application, and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e), and (f) of Section 157.20 and paragraphs (b)(3)(i) and (iii) of Section 157.7 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of up to 750 horsepower of compression facilities in the Woodlawn Field during the period April 1, 1966 through March 31, 1967, all as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), and (f) of Section 157.20 of such Regulations.

(C) Applicant shall file with the Commission by May 30, 1967, the statements set forth in Section 157.7(b)(3) (i) and (iii).

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

REQUIREMENT THAT THE TITLE TO A PLEADING INCLUDE THE NAME OF THE PARTY MAKING THE FILING, DOCKET NO. R-300

ORDER NO. 321

AMENDING THE RULES OF PRACTICE AND PROCEDURE

(Issued April 11, 1966)*

The Commission by this order amends its formal requirements as to pleadings, documents, and other papers filed in Commission proceedings. Although the practice is not uncommon, the present rule does not require that the name of the person in whose behalf a filing is made be included in the title of the particular document filed. Since the convenience attendant upon such a practice is obvious, especially in multiparty proceedings, we will now require it by rule.

The Commission finds:

(1) It is necessary and appropriate for the administration of the Federal Power Act and Natural Gas Act that the Rules of Practice and Procedure be amended as herein set forth.

(2) Since the amendment herein prescribed establishes a rule of agency procedure, no notice of proposed rulemaking under section 4 of the Administrative Procedure Act is required.

The Commission, acting pursuant to the authority of the Federal Power Act, as amended, particularly sections 308 and 309 thereof (49 Stat. 858; 16 U.S.C. 825g, 825h) and the Natural Gas Act, as amended, particularly sections 15 and 16 thereof (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), *orders:*

(A) Section 1.15, Rules of Practice and Procedure, Part 1, Sub-chapter A of Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding two sentences to paragraph (a) thereof. As so amended, the paragraph will read as follows:

§ 1.15 Formal requirements as to pleadings, documents and other papers filed in proceedings.

(a) *Title.* Pleadings, documents, or other papers filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. They shall also show, in the title of the particular pleading or other document filed, the name of the person in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(B) The amendment herein prescribed shall be effective May 11, 1966.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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* Published in the Federal Register on April 16, 1966 (31 F.R. 5878).

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., David S. Black, Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-92

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1966)

On November 9, 1965, United Gas Pipe Line Company (Movant) filed in Docket No. CP63-92, as supplemented on January 11, 1966, a motion to amend the Commission's order issued July 5, 1963, 30 FPC 49, in said docket, to authorize Movant to construct and operate a new tap and to transport and deliver natural gas for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the motion to amend in this proceeding.

The order of July 5, 1963, authorized Movant, by means of existing facilities, to transport and deliver natural gas for Texas Eastern from Castor to Monroe, Louisiana. Movant now proposes to construct and operate a 2-inch tap on its existing 24-inch Carthage-Sterlington Line, Bienville Parish, Louisiana, in order to transport said gas for redelivery to Texas Eastern at the existing delivery point near Monroe.

The cost of the new tap is estimated to be $525. Movant and Texas Eastern have entered into a letter agreement, dated October 5, 1965, providing for the proposed new tap and for the transportation and delivery of gas by Movant from the Liberty Hill Field to Monroe.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 25, 1965 (30 F.R. 14696).

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 5, 1963, in Docket No. CP63-92 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued July 5, 1963, in Docket No. CP63-92 is amended to authorize Movant to construct and operate the proposed 2-inch tap and to transport and deliver natural gas, all as hereinbefore described and as set forth in the motion to amend.

(B) The new 2-inch tap herein authorized shall be constructed and placed in actual service within two months from the date on which this order issues.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GEORGE H. COATES, ET AL., DOCKET NOS. G-19824 AND RI61-369

ORDER GRANTING IN PART REQUEST FOR TIME EXTENSION

(Issued April 12, 1966)

George H. Coates (Coates) on March 23, 1966, filed a motion requesting an extension of time within which to comply with certain refund requirements provided for in the order issued August 20, 1965, 34 FPC 550, approving a settlement in the above-entitled proceedings.

The request for a time extension is related to Coates' motion for clarification filed on September 23, 1965, in which he sought relief from the obligation imposed in the August 20 order to pay interest with respect to refund amounts collected in the above-entitled proceedings relating to increased production taxes paid to the State of Texas.[1] He states therein that he will not be paid any interest by the State of Texas on any portion of the increased production taxes which is refunded to the purchaser as a result of the settlement order. No action has been taken by the Commission on Coates' motion pending disposition of the rulemaking proceeding in Docket No. R-280 relating to this same subject.

Coates has computed the refund amount due, inclusive of applicable interest, under the August 20 order, to be $49,816.79. This apparently includes the interest due with respect to refund amounts relating to the increased production tax. He has not, however, submitted a statement from his purchaser, Tennessee Gas Transmission Company (TGT), agreeing to the correctness of his computation, nor has he made any refunds, as required by the order of August 20, 1965.[2]

We believe it is appropriate to defer Coates' obligation to pay interest on refund amounts relating to increased production taxes paid to the State of Texas until action is taken on his motion for clarification. We see no need, however, to further postpone the payment of those refund amounts, including interest, which are not in dispute here. Coates shall therefore be required to refund such amounts promptly.

The Commission orders:

(A) Coates shall compute the difference between the rates collected subject to refund and the settlement rate of 15.0¢ per Mcf for sales to TGT in Docket Nos. G-19824 and RI61-369, with applicable interest to August 20, 1965 (exclusive of the interest due on refund amounts relating to increased production taxes paid to the State of Texas), and shall within 15 days from the date of issuance of this order submit a report to the Commission, with a copy to TGT, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the periods covered, and ten days thereafter file a letter from TGT agreeing to the correctness of such amounts, and shall within ten days from such filing refund such monies to TGT.

(B) Coates shall not be required to refund any interest due on refund amounts relating to increased production taxes paid to the State of Texas as provided in the August 20, 1965, order in the above-entitled proceedings, until such time as the Commission takes action on Coates' motion for clarification of that order.

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[1] According to the appendix attached to the September 23 motion, the amount of interest in dispute is $310.43.

[2] Coates has obtained a number of time extensions from the Secretary of this Commission within which to comply with these requirements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IDAHO POWER COMPANY, DOCKET NO. E-7270

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued April 12, 1966)

By order issued March 25, 1966, 35 FPC 412, in the above-entitled matter, the Commission authorized Idaho Power Company (Applicant), to issue and sell at competitive bidding $20,000,000, principal amount of First Mortgage Bonds, due 1996, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on April 12, 1966, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Blyth & Co. Inc., Lazard Freres & Co., The First Boston Corporation, to purchase the proposed issuance of $20,000,000, principal amount of Bonds, for the price of 99.28% of principal amount, with an interest rate of 5¼%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued March 25, 1966, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued March 25, 1966, in the above docket.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-149 (PHASE I)

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 12, 1966)

On November 10, 1965, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP66-149 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities together with increases in Contract Demand Service to existing customers for the 1966-67 and 1967-68 winter heating seasons, all as more fully set forth in the application.

Applicant proposes to construct and operate over a two-year period the following facilities:

(a) approximately 148.19 miles of pipeline varying in diameter from 4 to 36 inches,

(b) one 30-inch Cumberland River crossing in Kentucky,

(c) one 30-inch Ohio River crossing near Madison, Indiana,

(d) one 26-inch Atchafalaya River crossing near Morgan City, Louisiana,

(e) one 16-inch Ohio River crossing near Evansville, Indiana, and

(f) 23,430 compressor horsepower.

Applicant states that the service proposed is for its existing customers and that the proposed increases in Contract Demand are based upon a detailed market survey and include all of the increases in peak day volumes which Applicant has been requested to provide.

Applicant also proposes to increase the deliverability from the existing Hanson, Kentucky, Storage Field by 40,000 Mcf of gas per day and to activate the White River Storage Field located in Pike County, Indiana, with an initial withdrawal capacity of 5,000 Mcf of gas per day.

Applicant requests authority to abandon approximately 34.65 miles of pipeline varying in diameter from 2 to 4 inches. Applicant states that the pipelines to be abandoned are in poor condition and will be replaced with new pipe in order to assure continuity of service in the affected areas of its pipeline.

Applicant also requests authority to reduce the Contract Demand of Arkansas Louisiana Gas Company (Ark La) to 28,110 Mcf of gas per day effective November 1, 1966. Service of the reduced Contract Demand will be rendered under Applicant's CD-1 Rate Schedule.

Applicant proposes to deliver an additional 55,429 Mcf per day of Contract Demand gas to existing customers commencing with the 1966-67 winter heating season, and an additional 61,040 Mcf to existing customers commencing with the 1967-68 winter heating season. The total estimated cost of Applicant's proposed project is $21,579,000.

On February 14, 1966, Applicant filed in Docket No. CP66-149 an amendment to its original application which requests changes in the length of pipeline proposed to be constructed in the states of Louisiana and Kentucky and proposes an additional compressor unit to be constructed in Mississippi, all as more fully set forth in the amendment to the application.

The facilities initially proposed by Applicant for construction and operation in the instant docket were designed to be installed concurrently with or subsequent to the construction of the facilities proposed by it in its pending application filed on July 14, 1965, in Docket No. CP66–13 (30 F.R. 9418). The facilities originally requested for construction and operation in the instant docket, if built prior to those requested in Docket No. CP66–13, will not provide the needed capacity to meet the increased requirements sought therein by Applicant for its existing customers for the winter heating seasons of 1966–67 and 1967–68.

The application filed in Docket No. CP66–13 requested authorization from the Commission to build and operate facilities needed to meet the service sought from Applicant by the City of Hamilton, Ohio, in its application filed on June 16, 1965, in Docket No. CP65–420 pursuant to Section 7(a) of the Natural Gas Act (30 F.R. 8352). Subsequently, The Ohio Fuel Gas Company filed a competitive application on December 23, 1965, in Docket No. CP66–207 (31 F.R. 463). The Commission has consolidated Docket Nos. CP66–13, CP65–402 and CP66–207 (31 F.R. 1218), and the proceeding has gone through the hearing phase (March 2, 3 and 4, 1966) and is now in the briefing stage.

Applicant states that in view of the foregoing, it is incumbent upon it to amend its original application filed in the instant docket by requesting authorization for the construction and operation of facilities which, if built independently of any facilities pending authorization, will provide sufficient capacity to serve the increased requirements of its customers for the heating seasons of 1966–67 and 1967–68. Accordingly, Applicant proposes a reduction of approximately 9.11 miles from the 54.95 miles of 36-inch pipeline originally proposed to be constructed in Tennessee and Louisiana, an increase of approximately 1.51 miles in the total 30.54 miles of 30-inch pipeline originally proposed to be constructed in Kentucky, and the addition of one 9,100 horsepower unit to be constructed in the Lake Cormorant, Mississippi Compressor Station.

The total estimated cost of Applicant's proposed project, as amended, is $22,427,000, which cost will be financed through the issuance of long-term debt securities.

On February 16, 1966, Applicant requested certificate authorization, for certain "First Phase Facilities and Service" (Phase I) described in the instant amended application.

Of the facilities proposed in the subject application, Phase I facilities include: (1) construction of 94.50 miles of pipeline along with three river crossings; (2) installation of 30,530 additional horsepower of compression; (3) development of the Hanson Storage Field; (4) activation of the White River Storage Field and; (5) the abandonment of 34.65 miles of pipe, all to be completed during 1966. The estimated cost of the additional facilities proposed in Phase I is $14,788,715.

Phase I service includes serving an additional 55.429 Mcf/d of Contract Demand to existing customers during the 1966–67 winter and reducing the Contract Demand of Ark La. an existing customer, to 28,110 Mcf/d beginning November 1, 1966. The remaining facilities and service (Phase II) proposed in the subject application as amended will be considered by the Commission in a future formal hearing.

After due notice of the application published in the Federal Register on November 30, 1965 (30 F.R. 14823) petitions to intervene in support of the application filed by Applicant were filed by The Ohio Fuel Gas Company and Louisville Gas and Electric Company, on December 13, and December 23, 1965, respectively. Tennessee Gas Transmission Company filed a petition to intervene on December 13, 1965, and subsequently thereto on February 24, 1966, filed a letter with the Commission stating it has no objection to the Commission granting to Applicant authorization with respect to the First Phase Facilities and Service (Phase I). No other petitions to intervene, or notice of intervention or protest to the granting of the application with respect to Phase I have been filed, or to the amendment to the application filed February 14, 1966, notice of which was published in the Federal Register on March 4, 1966 (31 F.R. 3434).

At a hearing held on April 7, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and amendment thereto and exhibits; submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G-855 (7 FPC 213).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application, supplement and amendment thereto filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval thereof should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce, as hereinbefore described as Phase I and as more fully described in the application, filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Texas Gas Transmission Corporation, of the facilities hereinbefore described in connection with Phase I as more fully described in the application, supplement and amendment thereto and exhibits filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Texas Gas Transmission Corporation, authorizing the construction and operation of the Phase I facilities, and the sale and transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities authorized in Phase I shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order is issued.

(F) The certificate issued by paragraph (B) for Phase I facilities is conditioned upon Applicant's compliance with the following requirements:

(1) that the maximum withdrawal capacity limitation of the Hanson Storage Field is increased from 30,000 Mcf/d to 50,000 Mcf/d.

(2) that the new White River Storage Field is limited to a maximum withdrawal capacity of 5,000 Mcf/d, a maximum storage capacity of 500,000 Mcf, and a maximum average shut-in well pressure of 660 psig.

(3) that the following information regarding the new White River Storage Field is submitted semiannually, in writing, to coincide with the termination of the injection and withdrawal cycles:

(a) Volumes of natural gas injected and withdrawn during each cycle.

(b) Volume of natural gas in the storage reservoir at the end of each cycle.

(c) Maximum daily injection and withdrawal rates experienced during the cycle.

(d) Shut-in wellhead pressure of each well in the storage field and the average of such pressures.

(e) Map of the storage field showing shut-in wellhead pressures at all storage wells in the area immediately adjacent to storage field.

(f) Reports will be filed semiannually until the average shut-in wellhead pressure has reached or has closely approximated the maximum storage pressure permitted in the Commission's order, and thereafter until two additional injection and withdrawal cycles have been completed. Upon completion of those two cycles, the filing of reports shall be discontinued unless otherwise ordered by the Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING (HUGOTON-ANADARKO), DOCKET NO. AR64-1 AND PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66-24

ORDER SEVERING PROCEEDINGS AND PRESCRIBING PROCEDURES

(Issued April 13, 1966)*

The Commission, by order issued June 29, 1964, 31 FPC 1595, enlarged the issues in the Hugoton-Anadarko Area Rate Proceeding, Docket No. AR64-1, to provide that there be included in that proceeding "consideration of the extent to which, if any, the rates or cost allowances for pipeline gas production should be regulated on an area basis." On December 30, 1965, the Commission staff moved to sever the pipeline production question from this proceeding and for the institution of a separate proceeding to deal with the matter. Staff further moved that (1) a prehearing conference be held to delineate issues in evidence and (2) that all pipelines engaged in production be required to submit evidence and (3) that the examiner in the new proceeding consider the feasibility of a two-phase hearing respecting gas produced from dedicated reserves and that produced from future reserves.

On January 19, 1966, 35 FPC 98, the Commission postponed all hearings and other procedure with respect to pipeline production pending action on the staff motion.

Staff's motion is supported by Texas Independent Producers and Royalty Owners Association (TIPRO), Municipal Gas Group (American Public Gas Association, the City of Chicago, the City of Denver, and the Memphis Gas And Water Division), the State of California and the California Public Utilities Commission (Cal PUC), and the Philadelphia Gas Works Division of The United Gas Improvement Company (PGW). PGW suggests that the matter be dealt within a rulemaking proceeding.

Opposing the staff motion are two independent producers (Phillips and Humble), Union Producing Company, the Cities Service Group (classified as independent producers but affiliated with a pipeline company), two distributors (Michigan Gas Utilities Company and Central Illinois Light Company), and two groups of producing pipelines and their affiliates.[1] Most of the independent producers not represented by TIPRO take no position. A large percentage of the nation's producing pipelines are not parties to this proceeding or have taken no position.

Whether the Commission may or should depart from the cost-of-service method in fixing the price of pipeline produced gas is the precise issue to be determined in this investigation. The issue was originally consolidated with this proceeding for the principal reason that Hugoton-Anadarko is an area of considerable pipeline production and thus this proceeding provided an appropriate vehicle for evaluating the general pipeline production issue. For the reasons hereinafter stated we do not now believe that such a determination can be made within the context of the present proceeding.

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* Rehearing denied, 35 FPC 1033. Petition to Review dismissed, *Colorado Interstate Gas Co.* v. *F.P.C.*, 370 F. 2d 777 (CA10–1967).

[1] The Pipeline Production Group and the Pipeline Division of INGAA. A number of pipelines filed separate briefs in opposition to staff's motion. Most of the companies filing separate briefs, however, are also represented in the group briefs. Only the Pipeline Division of INGAA, and not the entire membership, opposes staff motion.

A group of pipelines asserting an interest in encouraging pipeline production activity have introduced considerable general evidence into the record detailing the reasons why they believe pipeline production is in the public interest and should be encouraged. The staff and some of the other parties have now introduced separate historical cost studies as of 1962 for pipeline production nationally and in the two regions involved in Docket Nos. AR64-1 and AR64-2 (taken from the all area questionnaire). However, no evidence has been introduced upon which a determination could be made of the impact upon the consumers of the various pipelines of substituting an area rate for one based upon each company's individual cost, nor has evidence been introduced which permits any meaningful judgment whether gas from leases or properties acquired by the pipelines during the formative period of the pipeline industry should be separately treated. Neither is there any evidence as to the relative acquisition costs over the years of pipelines which have engaged extensively in pipeline production as against those which have not.

While the evidence introduced in the proceeding thus far is incomplete, it does appear to indicate that pipeline production in the Hugoton-Anadarko area is by no means typical of pipeline production throughout the nation. Our experience in pipeline rate cases would also indicate that much of the production in the area is of low cost, with the result that on a historic cost-of-service basis, it is significantly lower in cost than the nationwide cost of service for all gas. On the other hand, there is no evidence that nationwide all pipeline production, on a historical cost-of-service basis, has costs any lower than those of independent producers. Thus, there is no reason to believe that a determination with respect to the pipelines having production in the Hugoton-Anadarko area would or should necessarily be applicable to pipelines with production centered in other areas of the country. This situation is aggravated by the fact that not all pipeline producers are parties to the proceeding and some of the major pipeline producers with no production in the Hugoton-Anadarko region have not participated to date.

In view of the present state of the record it appears probable that, if the pipeline production issues were left in the present proceeding, the Commission would be compelled to make its determination upon an inadequate record. The only other alternative would be to attempt at this late stage in the proceeding to remedy the present deficiencies in the record. This would inevitably delay substantially the final determination of proper area rates in *Hugoton-Anadarko* and *Texas Gulf Coast* areas to the clear detriment of both the producers and their jurisdictional customers.

It is regrettable that the pipeline production issue has been continued as part of this proceeding until such a late date. If the effect of staff's motion was merely to relieve it from the burden of proceeding we would deny the motion out of hand. We think, however, that this would be a disservice to all parties including those who oppose the motion. A principal basis for the opposition to the motion is that if the pipeline production issue is severed, much of the labor and expense of this proceeding will be wasted, especially that expended to putting in the evidence so far received. Examination of the evidence so far presented reveals that it consists principally of prepared questions and answers submitted for copying by the reporter. Such evidence may readily be received and considered in another proceeding. It should be supplemented rather than supplanted. Cross-examination has not yet been had. Under these circumstances little of the effort and expense will be wasted.

Mere severance, however, is clearly not enough. The question remains whether there is any way in which resolution of at least part of the pipeline production issue can be expedited in the light of the very real problems discussed above. We believe that there is. The essential question after all is whether future and additional pipeline production activities should be encouraged (or at least not penalized) and, if so, what is the most appropriate lawful pricing technique to achieve this objective. It is apparent that if putting pipeline production on an area price basis does not make sense for the future lease acquisitions, that it will make even less sense for the past acquired leases where we have high and low cost pipeline production depending upon combination of such factors as vintage and area of exploratory efforts. At the same time, it would appear that many of the most difficult evidentiary and policy problems can be avoided or at least deferred if, in any separate proceeding on pipeline production costing, consideration is initially limited to a determination of whether pipeline produced and self-consumed gas or leases acquired after the date of any final Commission policy determination—by rule or otherwise—should be priced on an area basis and, if so, the exact nature of such area rate.[2]

In severing this issue we hesitate to impose any rigid format on the interested parties at this time. Instead, we shall direct the hearing examiner in the separate proceeding to hold a prehearing conference which will expeditiously and firmly establish the specific issues which will be considered in the first phase of this proceeding which is denominated as follows:

> What is the most appropriate pricing method to be applied to natural gas utilized in a pipeline's interstate system which is produced by the pipeline or its affiliated producing company from leases acquired after the date of determination of this issue?

Without in any way limiting the prerogatives of the Presiding Examiner to rule on the materiality and relevancy of the specific issues the parties may urge must be answered to resolve the foregoing question, we would suggest that the general areas of investigation, among others, should include evidence and data relating to: (1) the effect of pipeline production area rates on various aspects of individual pipeline rate determinations, such as but not limited to, rate of return and income tax allowance (2) the impact on the independent producer segment of the natural gas industry, if pipeline production is to be encouraged; (3) the claimed advantages and benefits to the pipeline and the consumers from pipeline production as reflected in the past operations of producing pipelines and as compared with the operations of pipelines not engaged in production activities.

Clearly, the formulation of a meaningful record which will provide as broad a base as possible for resolving the overall issue set out above, requires participation of all pipeline companies engaged in the production of natural gas in more than an incidental capacity and of a substantial capacity and of a substantial segment of other pipeline companies whose rates and charges are subject to the jurisdiction of the Commission. Accordingly, each of the pipeline companies listed in Appendix A attached hereto are made respondents in this severed proceeding.

Attention is directed to the Commission's views with respect to the use of the conference technique and the ultimate objective of expediting the Commission's hearing proceedings as set forth in Order No. 217, 22 FPC 872. Each of the respondents shall, at the pre-hearing conference, set forth on the record a statement summarizing the extent to which it proposes to participate in the first phase of this proceeding (as set out above), the specific issues relating thereto which it deems relevant and material, the nature of the evidence it proposes to present on such issues, and other matters germane and relevant to this phase of the proceeding which will aid the determination thereof. The requirements of the aforementioned statement shall also be applicable to Commission staff and any other party permitted to participate as a respondent or intervener in this proceeding. It is also our intent that the parties, at the prehearing conference herein provided, shall stipulate, to the maximum feasible extent, on all issues of fact not in dispute, items to be officially noticed, relevant material which may profitably be incorporated into the record of this severed proceeding either from the responses to the All Area Questionnaire and evidence introduced in AR64-1 and other proceedings.

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[2] Presumably, much if not all of the information already introduced by the pipeline production group and other parties who have directed themselves to this issue would be relevant to such a determination.

The Examiner is requested to exercise to the full his powers to expedite these proceedings and to provide a full and complete record by requiring service of the facts relating to each specific issue he determines material and relevant by the party or parties in control of the facts relating to that issue upon all other parties to this proceeding.

Certain of the parties have requested oral argument on Staff's motion. It is our view that oral argument is not necessary or appropriate since the actions herein relate to procedural matters, and grant of such request could only result in further delay. Moreover, the views of the several parties are fully set forth in the briefs submitted. Accordingly, the requests for oral argument are hereby denied.

The Commission orders:

(A) The proceedings promulgated by our "Order Enlarging Issues" issued June 29, 1964, 31 FPC 1595, concerning the methods to be used in pricing pipeline produced gas which were consolidated for hearing and decision with the Hugoton-Anadarko Area Rate Proceeding, Docket No. AR64-1, *et al.*, are hereby severed from that docket.

(B) A separate proceeding entitled "Pipeline Production Area Rate Proceeding, Docket No. RP66-24, is hereby instituted, pursuant to Sections 4, 5, 10, 14, 15, and 16 of the Natural Gas Act, to determine the proper method to be used by the Commission in pricing natural gas produced by pipelines and or acquired by them from their affiliated producers.

(C) A prehearing conference shall be held in a hearing room of the Commission at 441 G Street, N.W., Washington, D.C. commencing 10 a.m. May 17, 1966 before Presiding Examiner Allan C. Lande in the proceeding instituted by paragraph (B) above, limited to the first phase of this proceeding as denominated in the text of this order, and to achieve the purposes set forth in the text of this order.

(D) Each of the pipeline companies listed in Appendix A attached hereto are joined as parties-respondent in the proceeding instituted by paragraph (B) above.

(E) At the conclusion of the prehearing conference prescribed by paragraph (C) above, or shortly thereafter as he deems necessary, the Presiding Examiner shall set forth on the record or by separate order his determination of the specific issues material and relevant to the first phase of this proceeding on which evidence is to be adduced on the record and shall designate, if necessary, the party or parties which are in control of the facts relating to any such specific and set the date on which such facts shall be furnished to each party to the proceeding.

(F) Concurrently with the actions taken under paragraph (E) above, the Presiding Examiner shall also set the dates for service of testimony and exhibits by the parties and the date for commencement of the hearing and cross-examination.

(G) Nothing herein shall be deemed to limit the authority of the Presiding Examiner's control of these proceedings to modify or enlarge on the procedures here provided consonant with our underlying and expressed purpose to adduce a full and complete record on the first phase of this proceeding as expeditiously as possible.

(H) Any interested person, other than the respondents specifically listed in Appendix A, who desires to participate as an intervener in the proceeding here instituted shall, on or before May 2, 1966, file a notice of intervention or petition to intervene in accordance with Section 1.8 of the Commission's Rules of Practice and Procedure.

Commissioner Bagge *concurring.*

APPENDIX A

PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66-24

PIPELINE COMPANIES JOINED AS PARTIES-RESPONDENT

Alabama-Tennessee Natural Gas Company
Algonquin Gas Transmission Company
Atlantic Seaboard Corporation
Cities Service Gas Company
Colorado Interstate Gas Company
Consolidated Gas Supply Corporation
Cumberland and Allegheny Gas Company
El Paso Natural Gas Company
Florida Gas Transmission Corporation
Humble Gas Transmission Company
Kansas-Nebraska Natural Gas Company, Inc.
Kentucky Gas Transmission Corporation
Kentucky-West Virginia Gas Company
Lone Star Gas Company
Lone Star Gathering Company
Manufacturers Light and Heat Company, The
Michigan Wisconsin Pipe Line Company
Midwestern Gas Transmission Company
Mississippi River Transmission Corporation
Natural Gas Pipeline Company of America
Northern Natural Gas Company
Ohio Fuel Gas Company, The
Oklahoma Natural Gas Gathering Corporation
Pacific Gas Transmission Company
Panhandle Eastern Pipe Line Company
Southern Natural Gas Company
South Texas Natural Gas Gathering Company
Tennessee Gas Transmission Company
Tennessee Natural Gas Lines, Inc.
Texas Eastern Transmission Corporation
Texas Gas Pipe Line Corporation
Texas Gas Transmission Corporation
Transcontinental Gas Pipe Line Corporation
Transwestern Pipeline Company
Trunkline Gas Company
United Fuel Gas Company
United Gas Pipe Line Company

Bagge, *Commissioner, concurring:*

I must join my colleagues in ordering the pipeline production issue severed from this proceeding since I, like they, believe that such a severance will enable both the Hugoton-Anadarko Area Rate Proceeding and Pipeline Production Area Rate Proceeding to be decided more expeditiously than they could be if left in the same proceeding. However, I cannot join them without expressing my reluctance to do so.

It is embarrassing to be placed in a situation where we must grant a motion which is procedurally abhorrent in order to obtain an objective which is substantively necessary.

That this motion was filed some eighteen months after the Commission ordered the issues combined and that it was filed after many parties had expended considerable time, money and effort preparing testimony in accordance with that order does not obviate the substantive necessity for severance.

So, although I fear that this will be misinterpreted as a high-handed and collusive action taken by the Commission and our staff in derogation of the rights of those most immediately affected, I must, with great misgivings, join in today's decision.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-9279, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS, AND PRESCRIBING REFUNDS

(Issued April 13, 1966)

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceedings and for Shortened Procedure Certification filed on January 24, 1966, by Pan American Petroleum Corporation (Pan American) encompassing the rates for 257 of its currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Pan American provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area rate ceilings with eight exceptions hereinafter discussed;

(2) Pan American waives the right to file for contractually authorized increased rates to be effective prior to January 1, 1969, for all of the rate schedules involved in the settlement. However, Pan American reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Pan American will delete any favored nation, price redetermination and periodic pricing provisions in Rate Schedule Nos. 3, 8, 10, 12, 13, 19, 27, 31, 58, 63, 64, 72, 73, 79, 83, 86, 87, 98, 108, 150, 172, 176, 177, 178, 179, 186

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[1] The additional dockets involved herein are set forth in Appendices A, B, C, and D attached hereto.

(except for Supplement Nos. 5 and 6 thereto), 208, 241, 253, 254, 286, 287, 379, and 387 in accordance with the Second and Seventh Amendments to the Commission's Statement of General Policy No. 61-1, 18 CFR 2.56;

(4) Refunds with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those collectable at the settlement rate, in each instance, commencing with July 1, 1962, to the date of issuance of this order, for all of Pan American's rate schedules, excepting certain of its rate schedules for sales of natural gas in the San Juan Basin in the State of New Mexico under which partial refund will be made of monies charged and collected in accordance with the one-cent per Mcf minimum guarantee for liquids provisions contained in said rate schedules;

(5) Exclusion from the settlement proposal of all Permian Basin sales; twenty-one sales related to previous offers of settlement accepted by the Commission; sixteen sales to other producers and gatherers; one sale that is presently under court review; twelve sales in South Louisiana and those matters relating to the rate schedules shown on Appendix D hereto insofar as the proceedings thereunder pertain to the New Mexico Emergency School Tax Reimbursement portion of the rates.

In support of its proposal, Pan American states that the settlement rates, refunds, the moratorium period, and other provisions thereof not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences utilized cost-of-service studies and revenues based on contract rates to determine Pan American's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales where monies were collected subject to refund on and after July 1, 1962, as hereinafter ordered. Such refunds will approximate $14,000,000, plus applicable interest computed to January 1, 1966, which approximates 80.5% of the monies collected subject to refund above the settlement rates. For all the reasons stated in our order in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall order Pan American to retain the amounts of refund ordered herein until further action by the Commission directing their disposition; except, however, those refund monies due and owing Iroquois Gas Corporation, Lone Star Gas Company and Southern Union Gathering Company may be paid as hereinafter ordered since the amounts concerned are *de minimis.*

Pan American's presently effective rates will be reduced under the settlement proposal so as to effectuate an annual reduction of approximately $5,600,000 in its jurisdictional revenues. Thus, approval of Pan American's proposal will result in disallowance of approximately sixty-two percent of the increased rates currently being collected in Section 4(e) proceedings. Additionally, concurrent with the filing of the instant proposal, Pan American filed a voluntary reduction below the "last-firm-rate" for four sales and proposes to withdraw a filed increase for a fifth sale, all in South Louisiana, conditioned upon final approval of its settlement proposal. These unilateral rate decreases will result in a further reduction in Pan American's annual jurisdictional revenues of approximately $328,325.

Settlement rates which are exceptions to the applicable area increased rate ceiling are proposed by Pan American for five sales of natural gas made by it to United Fuel Gas Company (United Fuel) in South Louisiana. The sales are made under Pan American's FPC Gas Rate Schedule Nos. 78, 173, 174, 190, and 384, and along with sales made to United Fuel under Pan American's FPC Gas Rate Schedule Nos. 198, 219, and 240 were considered by the parties to the settlement conferences as a unit. Pan American proposes to reduce the presently effective rates to a settlement rate of 18¢ per Mcf of natural gas at 15.025 psia under its Rate Schedule Nos. 78, 174, 198, 219, 240, and 384. This would constitute a reduction of permanently certificated rates of 18.7¢ per Mcf under Rate Schedule No. 198; 22.1¢ per Mcf under Rate Schedule No. 219; and 19.1¢ per Mcf under Rate Schedule No. 240. It proposes to reduce the presently effective rates of 21.6¢ and 21.4¢ per Mcf respectively under its Rate Schedule Nos. 173 and 190 to 18.375¢ per Mcf as a part of the "package". Under these latter rate schedules, Pan American has committed additional productive acreage to the contracts which resulted in increased deliveries of natural gas to United Fuel. The proposed settlement rates exceed the applicable increased rate ceiling, but are below the applicable initial rate ceiling.

Another settlement rate which is an exception to the area ceiling applicable to it is a sale by Pan American to Tennesssee Gas Transmission Company (TGT) in South Louisiana made under its FPC Gas Rate Schedule No. 14. This sale was considered by the parties to the settlement conferences in conjunction with a sale to TGT made under Pan American's FPC Gas Rate Schedule No. 226 also in South Louisiana. Pan American proposes to reduce the presently effective rates under both of these rate schedules to 18.0¢ per Mcf of natural gas at 15.025 psia. Rate Schedule No. 226 was permanently certificated by the Commission at an initial rate of 18.5¢ per Mcf, and the presently effective rate, subject to refund is 23.6¢ per Mcf. The volumes of natural gas which Pan American delivers to TGT under Rate Schedule No. 226 far exceeds those which it delivers under its Rate Schedule No. 14.

Pan American proposes under its FPC Gas Rate Schedule Nos. 84, 338, and 410, rates which are exceptions to the applicable area ceiling for three sales it makes to Cities Service Gas Company (Cities) in the Kansas Hugoton Field. It proposes to reduce the presently effective rate of 14.5¢ per Mcf of natural gas at 14.65 psia for each of the sales to 12.5¢ per Mcf. These sales were also considered by the parties to the settlement conference as a unit. Pan American proposes to dedicate horizons from sea-level to the base of the Pennsylvanian formation underlying thirty-five thousand acres of the acreage now dedicated to Rate Schedule No. 84. Rate Schedule No. 84, which covers most of the acreage dedicated in the Kansas Hugoton Field by Pan American to Cities, presently provides for a contractual redetermination of prices every five years. As a part of the settlement, Pan American proposes to renegotiate Rate Schedule Nos. 84, 338, and 410 to provide for a one-cent per Mcf escalation every five years commencing June 23, 1971.

Consideration of all of the circumstances, particularly the added acreage and horizons, the reduction of permanently certified rates and the contractual renegotiations, causes us to believe that these sales, which were considered by the parties to the settlement conferences as units, are similar to others where we have considered such unique situations to warrant exceptions to the applicable area ceilings, *Shell Oil Company, et al.*, Docket No. G–9446, *et al.*, 28 FPC 257; *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837; and *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.*, 30 FPC 5. Therefore, we find the settlement rates of 18¢ per Mcf for eight sales and of 18.375¢ per Mcf for two sales made by Pan American in South Louisiana, and 12.5¢ for three sales made by it in the Kansas Hugoton Field to be proper and approve the same.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for deliveries presently being made under temporary authority.[2] We propose to set such applications for abridged statutory hearing in accordance with Section 7 of the Natural Gas Act, indicating that the settlement rates, as provided for herein, shall be the initial price. Included among the pending certificate applications are three sales which are presently involved in court review. They are Pan American's Rate Schedule No. 358, Docket No. CI63–1445 (consolidated with *H. L. Hawkins, et al.*, Docket No. G–18077, *et al.*) and Rate Schedule Nos. 362 and 391, Docket Nos. CI63–1263 and CI64–377, respectively (consolidated with *Turnbull & Zoch Drilling Co., et al.*, Docket No. G–17960, *et al.*) Pan American proposes that the settlement rates for these sales be subject to the final disposition of said proceedings whether after court review or otherwise.

On February 21, 1966, Philadelphia Electric Company (PEC)[3] filed its objection to the proposed settlement. PEC contends that "* * * Pan American's Southern Louisiana rate schedules should be treated uniformly and excluded from the settlement because of the pendency of the South Louisiana area rate proceedings (AR61–2) * * *". In the alternative, PEC avers that, if included, the rates for such sales should be at a level proposed by the staff of the Commission in that proceeding. That matter is now pending before the examiner who presided at the hearings, and the propriety of any rates proposed by any party to said proceeding is not now before us. Consequently, we believe PEC's contention in this regard is premature, and not relevant to whether our approval of Pan American's proposal is in the public interest.

Further, PEC contends that previous settlements, proposed by Pan American and approved by us, to some of which PEC was a signatory party, should have been included in the instant negotiations by the parties. Those settlements had their own moratoria periods which have not yet expired and under those circumstances the parties to the numerous company-wide settlement conferences, which have resulted in proposals being filed for our consideration, have uniformly excluded previous settlements. We do not believe PEC's contention that since previous settlements have achieved "* * * a reasonable measure of price stability * * *" is reason for us to depart from our policy of honoring settlements we have found to be in the public interest. In every order approving such settlements the Commission has made clear that its approval is "* * * unqualifiedly subject to final determination in area proceedings, or proceedings of a similar nature." *Southwest Gas Producing Company, Inc. (Operator), et al.*, Docket No. G–16714, *et al.*, 31 FPC 192, 193 and it is in the area proceeding, Docket No. AR61–2, that the matters urged by PEC will be before us. The same is true as to PEC's contention that the proposed settlement rates are in some manner discriminatory.

On March 10, 1966, PEC supplemented its objection by letter, in response to a reply to its objection which Pan American filed with the Commission on March 4, 1966. In its letter, PEC refers to a producer motion filed in Docket No. AR61–2 where it is asserted that no justification has been shown "for reducing Southern Louisiana rates to alleged Southern Louisiana cost levels when in other producing areas, such as the Permian Basin, *contract limitations* foreclose producers from recovering their costs incurred in such area, thereby leading to the inevitable result that the total revenues generated under such a system of area rates will be substantially less than the producing industry's total Continental U.S. costs "(Emphasis supplied)". PEC concludes that approval of the Pan American settlement would inevitably constitute a prejudgment of this issue in Docket No. AR61-2.

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[2] See Appendix B attached hereto.

[3] PEC is an intervener in Docket Nos. RI61–204 and AR61–2, *et al.*

While it is clear that approval of any settlement proposal does not prejudice future findings or orders of the Commission or positions of the parties, our approval of the present proposal would not in any event constitute prejudgment of the issue referred to by Philadelphia Electric. With the exception of settlements made under the Second and Seventh Amendments to our Statement of General Policy where higher rates are permitted when certain escalation clauses are removed, no changes have been made in the contracts. The rates set forth in Pan American's contracts remain unchanged, but they are voluntarily reducing their filed rates and their revenues under such contracts. Approval of such voluntary reductions without change in contract rates does not affect, to say nothing of prejudging, any issue raised in Docket No. AR61-2.

As we have stated in other orders approving settlements, we consider the refunds, which are based on cost-of-service determinations; the reduction in rates; and the stability in rates gained through moratoria, pending determination of just and reasonable rates in the area rate proceedings, to be in the public interest, *e.g.*, *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49. It should be noted that as a result of our approval of Pan American's proposal ten of its "last-firm-rates" will be reduced, of which five are not subject to Section 4 proceedings. We believe that the principles underlying the present settlement proposal are consistent with those utilized in previous major independent producer rate settlements, and shall approve the same.

Our action herein should not be construed as constituting approval of future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or orders of the Commission in pending or future proceedings, including area rate or similar proceedings, involving Pan American's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed by Pan American on January 24, 1966, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed by Pan American on January 24, 1966, is approved.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of January 1, 1966.

(C) The approved settlement rates shall be applicable during the moratorium period herein provided for all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Pan American, its successors or assignees.

(D) Pan American shall compute the difference between the rates collected subjected to refund and the related settlement rates or rate not subject to refund, whichever rate is the greater, for the period from July 1, 1962, to the date of this order, together with interest as specified in each docket to January 1, 1966. Pan American shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the bases used for such determination and the periods covered.

(E) Pan American shall retain the amounts shown in the report required under paragraph (D) above, subject to further action of the Commission directing the disposition of those amounts, *provided, however*, Pan American shall within 90 days from the date of this order, (1) refund with interest as specified in each docket computed to January 1, 1966, the difference between rates collected subject to refund and the related settlement rates, on and after July 1, 1962, to the date of this order for all of such of Pan American's Rate Schedules, where the rates were collected subject to refund for sales of natural gas to Iroquois Gas Corporation, Lone Star Gas Company, Southern Union Gathering Company and (2) report to the Commission in writing, the amount of refunds made to Iroquois Gas Corporation, Lone Star and Southern Union Gathering Company showing separately the amount of principal and interest so paid, and the basis used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(F) If Pan American elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 5½% per annum on all funds thus available from May 20, 1966, to the date on which they are paid over to the person ultimately determined to be entitled thereto by final action of the Commission.

(G) If Pan American elects to deposit the retained refunds in a special escrow account, Pan American shall tender for filing on or before, May 20, 1966, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Pan American and any bank or trust company used as a depository for funds of the United States Government and the Agreement shall be conditioned as follows:

(1) Pan American, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon, deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof, or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) The pending certificate proceedings set out in Appendix B hereto shall not be determined on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(I) Within 90 days from the date of this order, Pan American shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal.

(J) Upon full compliance by Pan American with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendices A and B hereto, except the suspension dockets shown on Appendix D insofar as they are related to the rate schedules shown thereon and Docket Nos. G–16515, G–19642, RI61–137, RI62–99, RI63–144, and RI64–223 insofar as they are related to the interests of Austral Oil Company Incorporated, Agent for Oil Participations Incorporated; Docket Nos. G–20001 and RI61–123 insofar as they cover the interest of Christie, Mitchell & Mitchell and Docket No. RI62–236 insofar as it is related to the interests of Theodore R. Johnson, and the Section 5(a) proceeding in Docket No. G–9279, shall terminate.

(K) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (J) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1, and AR64–2, respectively; and the consolidation order issued December 6, 1957, 18 FPC 782, in Docket No. G–9279, is rescinded.

(L) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Pan American, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Pan American or any other companies, person or parties affected by this order.

APPENDIX A

FPC Gas Rate Schedules, Pan American Petroleum Corp.

[Docket No. G-9279, *et al.*]

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
	Texas Railroad District No. 1 (at 14.65 psia)								
253	Cooke	Transcontinental Gas Pipe Line Corp.	G-16207	13.6823	RI64-45	14.6958	2		14.6958.[2]
254	Stuart City	do	G-18484	13.6823	RI64-71	14.6958	1		14.6958.[2]
286	Cooke	do	CI61-313	13.6823	RI66-152	14.6958	2		14.6958.[2]
	Texas Railroad District No. 2 (at 14.65 psia)								
2	Greta	do	G-2790	9.9993					9.9993.[3]
10	Blanconia	United Gas Pipe Line Co.	G-4064	7.5960	RI62-261	15.9000	17		15.0000.[2]
15	South Cottonwood Creek	Texas Eastern Transmission Corp.	G-4071	10.8605					10.8605.
29	Heard Ranch	Trunkline Gas Co.	G-4072	14.0000					14.0000.
58	Karon	Texas Eastern Transmission Corp.	G-5282	11.1232	G-15506	13.8733	13		14.5000.[2 3]
63	Boyce	do	G-5712	11.1232	G-15506	13.8733	14		14.5000.[2 3]
64	Heyser	Tennessee Gas Transmission Co.	G-5711	11.0282	RI64-411 G-17128	18.0000 15.3333	8 7		15.0000.[2]
80	Clayton	Natural Gas Pipeline Co. of America	G-4900	9.5209					9.5209.
82	South Mineral	Transcontinental Gas Pipe Line Corp.	G-4902	9.7799					9.7799.
85	Mineral	do	G-5114	9.7799					9.7799.
86	Meyersville	Texas Eastern Transmission Corp.	G-6828	11.1232	G-15506	13.8733	12		14.5000.[2 3]
87	Minoak	do	G-6832	11.1232	G-15507	13.8733	15		14.5000.[2 3]
92	Clay West, et al	Transcontinental Gas Pipe Line Corp.	G-6831	9.7799					9.7799.
114	Burnell and North Pettus	United Gas Pipe Line Co.	G-7529	14.0000	RI66-79	15.4850	13		14.0000.[4]
171	East Maxine	Natural Gas Pipeline Co. of America	G-11231	14.0000					14.0000.
176	Witte	Tennessee Gas Transmission Co.	G-4299	11.0282	G-17128 RI64-411	15.3333 18.0000	5 6		15.0000.[2]
177	Tom O'Connor	do	G-4297	11.0282	G-17128 RI64-411	15.3333 18.0000	5 6		15.0000.[3]
179	West Vidauri	do	G-4301	11.0282	G-17129 RI64-417	15.3333 18.0000	7 8		15.0000.[3]
180	Cabeza Creek	United Gas Pipe Line Co.	G-4306	12.1848					12.1848.
203	Yoward	Texas Eastern Transmission Corp.	G-12637	10.9210					10.9210.

See footnotes at end of table.

FPC GAS RATE SCHEDULES, PAN AMERICAN PETROLEUM CORP.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
287	South Oakville	Valley Gas Transmission, Inc.	CI60-555	14.0000	RI66-180	15.0000	2		15.0000.[2] [5]
306	North La Ward	United Gas Pipe Line Co.	CI61-1387	13.1664					13.1664.
356	Sol West	Valley Gas Transmission, Inc.	CI64-199	14.0000					14.0000.
406	Cottonwood Creek	Texas Eastern Transmission Corp.	CI65-321	12.0000					12.0000.
	Texas Railroad District No. 3 (at 14.65 psia)								
3	Big Hill	Texas Gas Pipe Line Corp.	G-2789	13.9325	G-19579	16.5000	8		15.0000.[2]
					RI65-178	18.2080	9		
8	Hastings, et al	Texas Eastern Transmission Corp.	G-4065	13.5095	G-13118	14.2000	14, 15		15.0000.[2]
					G-16677	14.6000	18		
					G-19611	14.8000	19		
					RI61-135	15.0000	20		
					RI62-97	15.2000	21		
					RI63-139	15.4000	22		
					RI64-205	15.6000	23		
					RI65-239	15.8000	24		
					RI66-115	16.0000	25		
51	Fairbanks	Natural Gas Pipeline Co. of America	G-4833	15.4599	G-9933	15.6633	6		15.4599.
					G-11000	15.7498	7		
					G-13063	15.9517	8		
					G-16087	17.1531	9		
54	Urbana	do	G-4829	12.5000					12.5000.
60	East Bay City	do	G-5663	15.4599	G-9933	15.6633	9		15.4599.
					G-11000	15.7498	11		
					G-13064	15.9517	12		
					G-16088	17.1531	14		
69	Old Ocean	do	G-4831	11.4884					11.4884.
73	Lucky	Tennessee Gas Transmission Co.	G-5664	13.4975	G-17085	16.1695	9		15.0000.[2]
					RI64-351	17.0000	11		
83	East Bay City	do	G-4903	13.4975	G-17085	16.1695	21		15.0000.[2]
					RI64-352	17.0000	22		
98	Chesterville	do	G-7522	13.4755	G-19004	15.9502	11		15.0000.[2]
105	Sheridan	Iroquois Gas Corp.	G-7504	16.6584	G-13469	17.6680	11		16.0000.
					RI62-314	18.6776	13		
178	Cecil Noble	Tennessee Gas Transmission Co.	G-4298	13.2782	G-17128	15.9502	5		15.0000.[2]
					RI64-411	17.0000	6		

186	Columbus	do	G-3766	13.2782	G-17128	15.9502	7		15.0000.[2]
					RI64-411	17.0000	8		
347	East Bay City	Natural Gas Pipeline Co. of America	CI63-656	18.0000					17.0000.
421	Old Ocean	do	CI66-64	15.5000	RI65-408	16.5000	1		15.5000.
12	La Sal Vieja	Tennessee Gas Transmission Co.	G-4075	12.1227	G-19481	15.0950	3		15.0000.[2]
					RI60-300	17.2435	4		
13	Alamo	do	G-4073	12.1227	G-19482	15.0950	5		15.0000.[2]
					RI60-300	17.2435	6		
79	Red Fish Bay	United Gas Pipe Line Co.	G-4899	12.6600	G-13677	14.8000	7		15.0000.[2]
					RI63-360	17.7478	9		
81	Luby and Petronilla	Transcontinenal Gas Pipe Line Corp.	G-4901	9.7799					9.7799.
138	Riverside O'Neil	Tennessee Gas Transmission Co.	G-7503	14.0000	RI66-181	15.0000	8		15.0000.[6]
241	West Puerto Bay	Texas Eastern Transmission Corp.	G-16776	14.6000	RI61-183	15.0000	1		15.0000.[2]
					RI62-98	15.2000	2		
					RI63-138	15.4000	3		
					RI64-196	15.6000	4		
361	Yeary	Valley Gas Transmission, Inc.	CI63-1262	15.0000					15.0000.
379	La Sal Vieja	Tennessee Gas Transmission Co.	CI63-1488	12.1227	G-20001	15.0952	5		15.0000.[2]
					RI61-123	17.2435	6		
	Texas Railroad District No. 6 (at 14.65 psia)								
19	Woodlawn	Mississippi River Fuel Corp.	G-4630	13.6300	G-15773	14.1344	8		15.0000.[2]
					RI61-538	14.6392	9		
					RI65-164	15.1440	10		
22	Southeast Carthage	Texas Gas Transmission Corp.	G-4618	11.6288					11.6288.
25	West Carthage	do	G-4619	11.6288					11.6288.
26	Carthage	United Gas Pipe Line Co.	G-4628	8.4784					8.4784.
27	Waskom	Mississippi River Fuel Corp.	G-4626	13.6296	G-13514	14.1344	5		15.0000.[2]
					RI61-183	14.8892	6		
					RI64-125	15.3940	7		
31	Woodlawn	do	G-4452	13.1248	G-12284	14.1344	16		15.0000.[2]
					RI60-225	14.6392	18		
					RI63-387	15.1440	19		
65	North Lansing	Arkansas Louisiana Gas Co.	G-5709	12.9983					12.9983.
72	Carthage	Tennessee Gas Transmission Co.	G-4623	12.6200	G-19921	14.4248	12		15.0000.[2]
77	Greenwood-Waskom	Arkansas Louisiana Gas Co.	G-7518	12.1881					12.1881.[9]
265	Willow Spring	Texas Eastern Transmission Corp.	G-19669	14.6000	RI64-207	15.6000	3		14.6000.
283	do	do	CI61-194	14.8000	RI61-152	15.0000	4		14.8000.
					RI62-131	15.2000	5		
					RI63-82	15.4000	6		
					RI64-223	15.6000	7		
					RI65-297	15.8000	8		
					RI66-110	16.0000	9		
300	Bethany	Arkansas Louisiana Gas Co.	G-16378	12.1880					12.1880.
394	Penn-Griffith	Lone Star Gas Co.	CI64-1198	14.4900					14.4900.

See footnotes at end of table.

FPC GAS RATE SCHEDULES, PAN AMERICAN PETROLEUM CORP.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate[1] (e)	4(e) docket No. (f)	4(e) rate[1] (g)	Supplement No. (h)	Category[20]	Settlement rate[1] (i)
	Texas Railroad District No. 10 (at 14.65 psia)								
192	Hansford & Bernstein	Northern Natural Gas Co.	G-11832	16.5000[10]	RI62-236	17.5000[10]	13		16.5000.[10]
			G-14990	17.0000[10]					17.0000.[10]
			G-16566						
			G-16567						
269	West Waka	do	G-16377	15.5000	RI63-250	16.5000	1		15.5000.
314	Chunn and Farnsworth	do	G-10484	15.5000	RI62-329	16.5000	3		15.5000.
355	W. B. McIntire and Lips Ranch "B".	do	CI63-781	17.0000					17.0000.
366	North Follett	do	CI63-805	17.0000					17.0000.
404	Mobeetle	Natural Gas Pipeline Co. of America	CI65-726	17.0000					17.0000.
407	West Lips	Northern Natural Gas Co.	CI65-378	15.0000					15.0000.
425	Northwest Menoota and Parsell.	Panhandle Eastern Pipe Line Co.	CI65-1212	17.0000					17.0000.
	Oklahoma—Other (at 14.65 psia)								
71	Katie	Lone Star Gas Co.	G-6022	9.0000					9.0000.
121	West Edmond	Cities Service Gas Co.	G-7493	10.5000					10.5000.
135	Katie	Lone Star Gas Co.	G-7482	9.0000					9.0000.
137	West Edmond	Cities Service Gas Co.	G-7487	10.5000					10.5000.
277	West Enville	Cimarron Transmission Co.	G-19417	15.0000					15.0000.
310	Southeast Durant	Lone Star Gas Co.	CI61-1772	15.0000					15.0000.
330	Northeast Cedardale	Michigan Wisconsin Pipe Line Co.	CI61-516	15.0000[15]					15.0000.[12]
337	Cartersville	Fort Smith Gas Corp.	CI63-21	12.2800					12.2800.
342	Woodward	Michigan Wisconsin Pipe Line Co.	CI63-286	15.0000[15]					15.0000.[12]
343	Northeast Cedardale	do	CI63-328	15.0000[15]					15.0000.[12]
344	Woodward	do	CI63-336	15.0000[15]					15.0000.[12]
345	do	do	CI63-337	15.0000[15]					15.0000.[12]
364	Arkoma	Arkansas Louisiana Gas Co.	CI64-695	15.0000					15.0000.
380	Star	do	CI64-23	15.0000					15.0000.[12]
381	North Cooper	do	CI64-67	15.0000					15.0000.[12]
395	Northeast Lacy	do	CI64-1487	15.0000					15.0000.[12]
398	Southeast Durant	Lone Star Gas Co.	CI65-37	15.0000					15.0000.
413	Woodward	Michigan Wisconsin Pipe Line Co.	CI65-847	15.0000[15]					15.0000.[12]

	Oklahoma – Carter-Knox (at 14.65 psia)								
268	Carter-Knox	Lone Star Gas Co	G-17898	16.8000	RI63-457	17.9000	2		16.8000.
	Oklahoma Panhandle (at 14.65 psia)								
130	Keyes	Colorado Interstate Gas Co	G-7485	15.0000	G-17315	16.0000	3		15.0000.
					RI64-417	17.0000	5		
161	South Forgan	Natural Gas Pipeline Co. of America	G-10301	15.0000	RI61-272	16.0000	2		15.0000.
					RI66-164	17.0000	3		
221	Enns Camrick	Panhandle Eastern Pipe Line Co	G-15162	16.0000	G-18949	16.2000	1		16.0000.
					RI61-6	16.4000	2		
					RI62-2	16.6000	3		
					RI62-500	16.8000	4		
					RI63-457	17.0000	5		
					RI64-787	17.2000	6		
					RI65-642	17.4000	7		
223	Mocane	do	G-15188	16.0000	RI63-469	17.0000	5		16.0000.
224	South Glenwood	Northern Natural Gas Co	G-15224	15.0000					15.0000.
225	Southwest Camp Creek	do	G-15226	15.0000					15.0000.
229	West Elmwood	do	G-15256	15.0000					15.0000.
232	Northeast Gate Lake	do	G-16294	15.0000					15.0000.
238	Laverne	Michigan Wisconsin Pipe Line Co	G-12868	17.0000					17.0000.
239	Mocane	Colorado Interstate Gas Co	G-16529	15.0000					15.0000 Baic Contract.
				16.5000					16.5000 Supplement No. 7.
				16.0000					16.0000 Supplement No. 8.
246	South Forgan-Mocane	Panhandle Eastern Pipe Line Co	G-17353	16.0000	RI63-244	17.0000	10		16.0000.
256	Laverne	Michigan Wisconsin Pipe Line Co	G-16759	17.0000					17.0000.
273	do	do	G-18435	17.0000					17.0000.
276	Mocane	Panhandle Eastern Pipe Line Co	CI60-722	17.0000					17.0000.
280	Laverne	Colorado Interstate Gas Co	CI61-19	15.0000					17.0000.
285	Lovedale	Michigan Wisconsin Pipe Line Co	CI61-228	17.0000					15.0000.
298	Southwest Camp Creek	Colorado Interstate Gas Co	CI61-1188	17.0000					17.0000.
305	Highland	El Paso Natural Gas Co	G-18660	17.0000					17.0000.
323	Northeast Gate Lake	Northern Natural Gas Co	CI62-628	17.0000					17.0000.
324	Six Mile	do	CI62-630	17.0000					17.0000.
327	South Forgan	Western Gas Service Co	CI62-783	9.8262					17.0000.
330	Northeast Cedardale	Michigan Wisconsin Pipe Line Co	CI61-516	17.0000					9.8262.
331	Laverne	do	CI62-1219	17.0000					17.0000.
336	Mocane	Northern Natural Gas Co	CI62-1522	17.0000					17.0000.

See footnotes at end of table.

FPC Gas Rate Schedules, Pan American Petroleum Corp.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
339	Laverne	Michigan Wisconsin Pipe Line Co	G-17547	17.0000					17.0000.
340	Lovedale	do	CI63-269	17.0000					17.0000.
342	Woodward	do	CI63-286	17.0000					17.0000.
344	do	do	CI63-336	17.0000					17.0000.
345	do	do	CI63-337	17.0000					17.0000.
349	Laverne	do	G-19441	17.0000					17.0000.
350	do	do	CI62-588	17.0000					17.0000.
351	do	do	CI62-589	17.0000					17.0000.
365	Mocane	Panhandle Eastern Pipe Line Co	CI64-705	17.0000					17.0000.
368	do	Colorado Interstate Gas Co	CI63-960	15.0000					15.0000.
383	Southeast Guymon	Cities Service Gas Co	CI64-78	16.0000					16.0000.
392	Quinlan	Michigan Wisconsin Pipe Line Co	CI64-1158	17.0000					17.0000.
399	do	do	CI65-122	17.0000					17.0000.
403	Laverne	do	CI65-661	17.0000					17.0000.
412	Mocane	Transwestern Pipeline Co	CI65-777	17.0000					17.0000.
413	Woodward	Michigan Wisconsin Pipe Line Co	CI65-847	17.0000					17.0000.
420	Camrick	Natural Gas Pipeline Co. of America	CI66-107	17.0000					17.0000.
	San Juan, N. Mex. (at 15.025 psia)								
93	Blanco-Mesaverde	El Paso Natural Gas Co	G-6829	12.0014	(18)	12.2309 (17)	4	A	13.0000.
					RI65-123 [19]	13.0000	5, 6, 7	A	
109	do	do	G-7495	12.0014	RI63-481 [19]	13.2309 (16) (17)	8	B	13.0000.
					RI64-388 [19]	14.2501 (16)	9	C	
117	Blanco and Flora Vista	do	G-7526	12.0014	RI63-487 [19]	13.2309 (16) (17)	19	B	13.0000.
					RI64-299 [19]	13.2295 (16) (17)	21	B	
					RI64-389 [19]	14.2501 (16)	22	C	
124	Kutz-Pictured Cliffs	do	G-7489	12.0000	(18)	11.2116 (17)	6	A	12.2309.
					(18)	12.2309 (17)	8	A	
163	Gallegos Canyon, et al	do	G-10799	12.0014 Dakota.	(18)	11.2116 (17)	10	A	12.2309.
				12.0000 Pictured Cliffs.	(18)	12.2309 (17)	12	A	
193	South Blanco, Pictured Cliffs, Tapacito Pictured Cliffs.	do	G-11969	13.0000	RI63-481 (19)	13.0536 (17)	8	D	13.0000.
					RI64-388 (19)	14.0578	9	D	
195	Aztec Blanco, Pictured Cliffs.	do	G-12273	12.0000	(18)	11.2104 (17)	14	A	12.2295.
			G-15305		(18)	11.2104 (17)	16	A	
			G-15504		(18)	12.2295 (17)	18	A	
			G-16557						

196	West Gallegos Canyon	do	G-12363 G-17933	13.0000 [17]	RI63-483 (19) RI64-148 (19) RI64-241 (19) RI64-389 (19)	13.2295 (16) (17) 13.2295 (16) (17) 13.2295 (16) (17) 14.2486 (16)	10 13 14 15	B B B C	13.0000.
201	Blanco-Mesaverde	do	G-12483	13.0014 [17]	RI63-481 [19] RI66-163 [19]	13.0509 [16] [17] 14.0000 [16]	5 6	B C	13.0000.
222	Bisti and Gallegos Gallup	do	G-17101	13.0000	RI63-481 [19] RI64-388 [19]	13.2486 [17] 14.2678	8 9	D D	13.0000.
233	Otero Graneros	do	G-15820	14.0000	RI63-481 [19] RI64-388 [19]	14.0578 [17] 15.0619	6 7	D D	13.0000.
[28] 261	Angel Peak-Gallup	do	G-19517	11.0000					11.0000.
291	Devil's Fork-Gallup	do	CI61-623	12.0000	(18) (18)	11.2104 [17] 12.2295 [17]	1 3	A A	12.2295.
302	Huerfano-Gallup	do	CI61-1307	12.0000 at 250 psi. 13.0000 [17] at 500 psi.	(18) RI63-481 [19] RI64-388 [19] RI64-532 [19]	11.2104 at 250 psi. 13.2295 [16] [17] at 500 psi. 14.2486 [16] at 500 psi. 12.2295 [17] at 250 psi.	2 2 4 5	A B C A	12.2295 at 250 psi. 13.0000 at 500 psi.
319	Bisti	do	G-17445	13.0000	RI63-481 [19] RI66-158 [19]	13.2486 [17] 14.0000	1 2	D E	13.0000.
320	Gavilan Pictured Cliffs	do	CI61-651	11.0000	(18) (18)	11.2104 [17] 12.2295	1 2	A A	12.2295.
363	Basin Dakota	do	CI64-175	13.0000					13.0000.
370	South Blanco-Pictured Cliffs.	do	CI63-1102	12.0000	(18) (18)	11.1104 [7] 12.2295 [17]	18 20	A A	12.2295.
371	Blanco Mesaverde	do	CI63-1101	13.0000 [17]	RI63-481 [19] RI64-388 [19]	13.2295 [16] [17] 14.2486 [16]	19 20	B C	13.0000.
376	West Kutz-Pictured Cliffs	do	CI63-1392	12.0000	(18) (18)	11.2104 [17] 12.2295 [17]	4 6	A A	12.2295.
377	do	do	G-8376	12.0000	(18) (18)	11.2104 [17] 12.2295 [17]	11 13	A A	12.2295.
378	do	do	G-5209	12.0000	(18) (18)	11.2104 [17] 12.2295 [17]	11 13	A A	12.2295.
382	Bisti Lower Gallup	do	CI63-1539	13.0000	RI64-94 [19] RI64-388 [19]	13.2486 [17] 14.2678	5 6	D D	13.0000.
396	Basin Dakota	Southern Union Gathering Co.	CI64-913	13.0000	RI65-335 [19]	14.0000	1	D	13.0000.
397	Cha Cha Gallup	El Paso Natural Gas Co.	CI64-1506	13.0000					13.0000.
400	Tocito Dome	do	CI65-101	13.0000	RI65-501 [19]	17.0000	4	D	13.0000.
405	do	do	CI65-374	13.0000					13.0000.
	Wyoming (at 15.025 psia)								
4	Manderson	Montana-Dakota Utilities Co.	G-2632	14.0256					14.0256.[9]
166	Middle Mountain	Mountain Fuel Supply Co.	G-10955	13.0000					13.0000.

See footnotes at end of table.

FPC GAS RATE SCHEDULES, PAN AMERICAN PETROLEUM CORP.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
236	East Labarge	El Paso Natural Gas Co	G-15387	15.0000 at 860 psig.					15.0000.[13]
				15.3840 at more than 860 psig.					
251	Trail	Mountain Fuel Supply Co	G-16364	13.0000					13.0000.
281	Pioneer Unit	do	CI61-74	13.0000					13.0000.
289	Chimney Butte Unit	El Paso Natural Gas Co	CI61-419	15.3840					15.3840.
301	Little Worm Creek	Mountain Fuel Supply Co	G-18061	13.0000					13.0000.
357	Kirby Draw	Kansas-Nebraska Natural Gas Co., Inc.	CI64-155	15.0000					15.0000.
409	Elk Basin	Montana-Dakota Utilities Co	G-7515	13.0000					13.0000.
415	West Side Canal	Mountain Fuel Supply Co	CI65-1027	15.0000					15.0000.
	Colorado (at 15.025 psia)								
108	Ignacio	El Paso Natural Gas Co	G-7497	13.0068	RI64-388	14.0074	10		14.0074.[2]
116	Ace Unit	Mountain Fuel Supply Co	G-7536	13.0000					13.0000.
210	Elm Grove	Kansas-Nebraska Natural Gas Co., Inc.	G-14201	4.0000					4.0000.
341	Riverside	do	CI62-1049	13.0000					13.0000.
387	Ignacio	El Paso Natural Gas Co	CI64-751	13.0000	RI66-158	14.0074	3		14.0074.[2]
414	Four Mile Creek	Mountain Fuel Supply Co	CI65-1025	15.0000					15.0000.
	North Louisiana (at 15.025 psia)								
16	East Haynesville	Arkansas Louisiana Gas Co	G-4070	14.4283					14.4283.
28	Bear Creek	do	G-4624	12.8200					12.8200.
30	Ivan	do	G-4411	13.9530					13.9530.
			G-12418						
77	Greenwood-Waskom	do	G-7518	12.3421					12.3421.[9]
112	Cotton Valley	United Gas Pipe Line Co	G-7531	13.0507					13.0507.
148	Sentell	Arkansas Louisiana Gas Co	G-8965	13.9613					13.9613.
150	Greenwood-Waskom	Texas Eastern Transmission Corp	G-10115	15.5956	G-16628	15.8007	10		16.7756.[2]
					G-19766	16.0058	13		
					RI61-207	16.2110	14		
					RI62-150	16.4161	15		
					RI63-144	16.6212	17		
					RI64-223	16.8263	18		
					RI65-278	17.0310	19		
					RI66-110	17.2366	20		

151	Sentell	Arkansas Louisiana Gas Co	G-10254	13.9613					13.9613.
167	Simsboro	do	G-10923	14.1533					14.1533.
172	Bethany-Longstreet	Texas Eastern Transmission Corp	G-11675	15.5956	G-19765 RI61-167 RI62-151 RI63-138 RI64-222 RI65-277 RI66-129	16.0058 15.7110 15.9160 16.1212[14] 16.3260 16.5310 17.2366	4 5 6 7 8 9 10		16.7756.[2] [14]
175	Sentell	Arkansas Louisiana Gas Co	G-3660	13.9613					13.9613.
185	Ruston	do	G-4305	13.7200					13.7200.
202	West Lisbon	Texas Gas Transmission Corp	G-12530	18.2500					18.2500.
235	East Lisbon	do	G-16208	18.2500					18.2500.
243	Carlton, Calhoun, Fremont.	do	G-16465	18.2500					18.2500.
247	Minden	do	G-17582	18.2500					18.2500.
250	Mt. Sinai	Arkansas Louisiana Gas Co	G-16956	13.4530					13.4530.
252	Blackburn	Texas Gas Transmission Corp	G-17877	18.2500					18.2500.
294	Calhoun	Arkansas Louisiana Gas Co	CI61-883	18.7500					18.7500.
322	Cheniere Creek	do	CI62-615	18.3333					18.3333.
335	Holly Ridge	American Louisiana Pipe Line Co	CI61-164	18.5000					18.5000.
352	Cheniere	Arkansas Louisiana Gas Co	CI63-783	18.3300					18.3300.
386	Cheniere Brake	do	CI64-811	18.3300					18.3300.
401	Greenwood-Waskom	United Gas Pipe Line Co	CI65-188	12.2500					12.2500.
332	Blackburn	Texas Gas Transmission Corp	CI62-1300	18.2500					18.2500.
	Arkansas (at 14.65 psia)								
208	Fort Lynn	Texas Eastern Transmission Corp	G-14120	14.3000	RI62-314 RI63-138 RI64-196 RI65-277 RI66-111	14.3437 14.6750 14.8750 15.0750 15.2750	4 5 6 7 8		15.0000.[7]
	South Louisiana (at 15.025 psia)								
14	South Crowley	Tennessee Gas Transmission Co	G-4074	10.7263	G-16514 G-19654	21.8333 22.8333	9 12		18.0000.
78	Valentine	United Fuel Gas Co	G-4898	17.5000	G-9500 G-11331 G-13442 G-16515 G-19641 RI61-136 RI62-98 RI63-119 RI64-222	17.4000 17.8000 18.2000 19.1000 19.5000 19.9000 20.3000 20.7000 21.1000	4 5 6 8 11 12 13 14 15		18.0000.

See footnotes at end of table.

FPC Gas Rate Schedules Pan American Petroleum Corp.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchase (c)	Certificate docket No. (d)	Last firm rate[1] (e)	4(e) docket No. (f)	4(e) rate[1] (g)	Supplement No. (h)	Category[20]	Settlement rate[1] (i)
173	South Pecan Lake	do	G-3216	18.0000[27]	G-8614	17.9000	5		18.3750.
					G-10144	18.3000	6		
					G-12285	18.7000	8		
					G-14730	19.1000	9		
					G-18106	20.0000	12		
					RI60-126	20.4000	13		
					RI61-401	20.8000	14		
					RI62-356	21.2000	16		
					RI63-387	21.6000	17		
					CI61-1280[11]	20.4000			
					RI61-548	20.8000			
					RI62-359	21.2000			
					RI63-389	21.6000			
174	Church Point	do	G-3209	17.5000	G-9603	17.4000	1		18.0000.
					G-11332	17.8000	4		
					G-13564	18.2000	8		
					G-16516	19.1000	10		
					G-19642	19.5000	13		
					RI61-137	19.9000	14		
					RI62-99	20.3000	15		
					RI63-144	20.7000	16		
					RI64-223	21.1000	17		
190	South Thornwell	do	G-10022	19.9000[26]	G-11446	17,8000	1		18.3750.
			CI60-485		G-13442	18.2000	2		
					G-16515	19.1000	4		
					G-19642	19.5000	8		
					RI61-137	19.9000	10		
					RI62-99	20.3000	11		
					RI63-144	20.7000	13		
					RI64-223	21.1000	14		
198	Valentine	do	G-12365	18.7000	RI61-183	19.9000	2		18.0000.
					RI62-98	20.3000	3		
					RI63-138	20.7000	4		
					RI64-222	21.1000	5		
219	Erath	do	G-15047	22.1000	RI60-239	22.8810	3		18.0000.
226	Bully Camp	Tennessee Gas Transmission Co.	G-15223	18.5000	G-19842	23.0917	2		18.0000.
					RI61-4	23.6000	3		
227	Bourg	United Gas Pipe Line Co.	G-15222	20.2500	RI61-294	22.2500	3		18.0000.
228	Napoleonville	do	G-15225	0.2500					18.0000.

240	Florence	United Fuel Gas Co	G-16758	19.1000	RI61-183	19.9000	2		18.0000.
					RI62-98	20.3000	3		
					RI63-138	20.7000	4		
					RI64-222	21.1000	5		
360	East and West Hackberry, Big Lake.	Valley Gas Transmission, Inc	CI63-1261	17.0000					17.0000.
384	Lake Long	United Fuel Gas Co	G-2793	17.5000	G-9476	17.4000	2		18.0000.
					G-11536	17.8000	3		
					G-13848	18.2000	4		
					G-17158	19.1000	5		
					G-19910	19.5000	7		
					RI61-223	19.9000	8		
					RI62-75	20.3000	9		
					RI63-143	20.7000	10		
					RI64-234	21.1000	11		
	Mississippi (at 15.025 psia)								
274	Hub	Southern Natural Gas Co	CI60-128	20.6000					20.6000.
311	Grange	do	CI62-46	20.6000					20.6000.
367	East Muldon	Texas Eastern Transmission Corp	CI63-1020	19.8000[14]					19.8000.[14]
	West Virginia (at 14.65 psia)								
353	Tyler	Consolidated Gas Supply Corp	CI63-782	25.0000					25.0000.
	Kansas (at 14.65 psia)								
36	Superseded by R.S. #375.								
38	Hugoton	Northern Natural Gas Co	G-4757	9.0000	RI60-209	17.1300[23]	6		11.0000.
41	Superseded by R.S. #375.								
47	Hugoton	do	G-4837	9.0000	RI60-210	17.1300[23]	13		11.0000.
48	do	Kansas-Nebraska Natural Gas Co., Inc.	G-4836	8.9329					11.0000.
49	do	do	G-4835	8.0000					11.0000.[22]
50	do	Northern Natural Gas Co	G-4834	11.0000	RI60-208	15.0000	4		11.0000.
52	do	do	G-4832	11.0000	RI60-208	17.1300[23]	6		11.0000.
55	do	do	G-4828	11.0000					11.0000.
[26] 84	do	Cities Service Gas Co	G-4904	10.7195	RI63-3	14.5000	89		12.5000[25]
[22] 111	do	Kansas-Nebraska Natural Gas Co., Inc.	G-7520	8.0000					8.0000.[21]
119	Adams Ranch	Michigan Wisconsin Pipe Line Co	G-7533	8.0000					8.0000.[25]
134	Southeast Liberal	Panhandle Eastern Pipe Line Co	G-7481	7.1460	RI60-271	15.0000	3		11.0000.
					RI65-335	16.0000	4		
170	Greenwood	Colorado Interstate Gas Co	G-11511	15.0000	G-17985	16.0000	1		15.0000.
					RI64-411	17.0000	2		
194	Richfield	Panhandle Eastern Pipe Line Co	G-12106	16.0000	RI62-377	17.0000	2		16.0000.
196	Greenwood	do	G-12325	15.0000	RI60-254	16.0000	3		15.0000.
			G-12324		RI65-589	17.0000	4		
209	McGuire, Goemann, and Northeast Rhodes.	Cities Service Gas Co	G-14224	12.0000	G-20304	13.0000	1		12.0000.
					RI65-387	14.0000	2		

See footnotes at end of table.

FPC GAS RATE SCHEDULES, PAN AMERICAN PETROLEUM CORP.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
212	Northwest Kismet	Panhandle Eastern Pipe Line Co	G-13764	15.0000	RI60-254	16.0000	4		15.0000.
					RI65-589	17.0000	5		
245	Greenwood	Colorado Interstate Gas Co	G-17508	16.0000	RI64-411	17.0000	2		16.0000.
334	Interstate	Anadarko Production Co	CI62-1437	5.0000					5.0000.
338	Hugoton	Cities Service Gas Co	CI63-146	8.4000 [23]	RI63-353	14.5000	18		12.5000.[25]
375	do	Colorado Interstate Gas Co	G-4759	11.0000	RI64-46	12.5000	4		11.0000.
					RI64-536	13.5000	5		
410	do	Cities Service Gas Co	G-6103	10.7195	RI65-522	14.5000	5		12.5000.[25]
416	Northwest Lemon	Northern Natural Gas Co	CI65-1047	14.0000					14.0000.
417	Hugoton	Kansas-Nebraska Natural Gas Co., Inc.	G-7528	11.0000					11.0000.
422	do	do							11.0000.

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[1] Unless otherwise indicated, all rates are expressed in cents per Mcf at the pressure base shown for the Commission pricing area in which each field is located. Unless otherwise indicated, all rates include applicable tax reimbursement and are subject to Btu adjustment as provided in the various contracts.

[2] Settlement rate at the area rate for increased rates under Sections 2.56(b)(1) and 2.56(c)(1) of FPC rules of practice and procedure. Where necessary, contract term to be extended so contract will remain in effect a minimum of 5 years from the effective date of the settlement herein.

[3] Redetermined price at this level to be filed in connection with this settlement.

[4] Contract price increased to 15.4850 cents on Oct. 1, 1965. Rate increase filing to be withdrawn.

[5] Increase to 15.0000 cents was filed on Nov. 4, 1965 to be effective Jan. 21, 1966.

[6] Ex parte filing of price increase to 15.0000 cents has been made. Future increases waived for 5 years from the effective date of the settlement herein.

[7] Settlement rate for increased rates applicable to Texas RR. Commission Dist. No. 6 under Section 2.56(b)(1) of the FPC rules of practice and procedure. If necessary, contract term to be extended so contract will remain in effect a minimum of 5 years from the date of the settlement herein.

[8] Rate shown includes charge for services performed by seller.

[9] Subject to service charge deductions on portions of the gas sold as provided by contract.

[10] Rate shown includes 1.0 cent per Mcf payment for liquids. Last firm rate is 17.0 cents for gas sold under Supp. No. 14 and 16.5 cents for gas sold from remaining acreage under contract. These are the settlement rates.

[11] Refunds to be made pursuant to the Commission order dated Jan. 29, 1965, in docket No. G-3216, *et al.*

[12] Subject to upward adjustment to area price for new gas if the area boundary between Oklahoma Panhandle area and other Oklahoma area is changed.

[13] 15.3840 cents for gas above 860 psig.

[14] Subject to service charge deductions as provided by contract.

[15] Last firm rate is 17.0 cents per Mcf for the portion of sales applicable to Oklahoma Panhandle area.

[16] These rates include 1.0 cent per Mcf minimum guarantee for liquids.

[17] These 4(e) cases are applicable only to the increase in tax reimbursement resulting from an increase in the New Mexico emergency school tax.

[18] Section 4(e) docket involved to remain in effect as to this supplement for determination of the correct level of tax reimbursement only. Docket shown on appendix D.

[19] This docket terminated as to this supplement.

[20] See the settlement proposal of Pan American for an explanation of categories A, B, C, D, and E.

[21] Superseded by R.S. No. 417, June 3, 1965, except for formations below the base of the Wolfcamp Series of the Permian System.

[22] Contract price recently increased to 11 cents and filing made.

[23] Rate is expressed at a pressure base of 16.40 psia.

[24] Contract has been canceled; production ceased. R.S. to be terminated.

[25] See "Amendment to Gas Purchase Contract" attached as an exhibit to Pan American's motion for approval of settlement proposal. This amendment and amendments providing for like price schedules on R.S. No. 338 and R.S. No. 410 are to be executed.

[26] Portion of sale is made at a firm rate of 20.3000 cents as established by prior settlement.

[27] Last firm rate for gas sales from added acreage under Supp. No. 18 is 20.0000 cents per Mcf. Initial deliveries from this acreage began on Feb. 3, 1965.

APPENDIX B

Pending Certificate Applications, Pending Applications To Amend Certificates and Related Section 4(e) Increases, Pan American Petroleum Corp.

[Docket No. G-9279, *et al.*]

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
	Texas Railroad District No. 3 (at 14.65 psia)								
[3] 186	Columbus	Tennessee Gas Transmission Co	G-15544	13.2782			5 6		15.0000.[2]
358	Palacios	Florida Gas Transmission Co	CI63-1445	17.5000					17.0000.[4]
	Texas Railroad District No. 4 (at 14.65 psia)								
362	Luby and Petronilla	Valley Gas Transmission, Inc	CI63-1263	15.5000					15.5000.[5]
391	West Willamar	Natural Gas Pipeline Co. of America	CI64-377	16.0000					16.0000.[5]
	Texas Railroad District No. 6 (at 14.65 psia)								
272	Carthage	Texas Eastern Transmission Corp	G-17511	12.4779	RI60-207 RI61-151 RI65-294 RI66-129	14.8000 15.0000 15.8000 16.0000	5 6 8 9		15.0000.[2]
	Texas Railroad District No. 9 (at 14.65 psia)								
390	Boonesville	Natural Gas Pipeline Co. of America	CI64-917	14.5000 [6, 7]	RI65-164	16.1500	4		14.5000.[6]
	Texas Railroad District No. 10 (at 14.65 psia)								
[8] 295	Kiowa Creek and Mammoth Creek.	Transwestern Pipeline Co	CI61-813	17.0000					17.0000.
372	Ellis Ranch	do	CI63-1293	17.0000					17.0000.

See footnotes at end of table.

PENDING CERTIFICATE APPLICATIONS, PENDING APPLICATIONS TO AMEND CERTIFICATES AND RELATED SECTION 4(e) INCREASES, PAN AMERICAN PETROLEUM CORP.—Continued

Rate Schedule No. (a)	Field (area and pressure base) (b)	Purchaser (c)	Certificate docket No. (d)	Last firm rate [1] (e)	4(e) docket No. (f)	4(e) rate [1] (g)	Supplement No. (h)	Category [20]	Settlement rate [1] (i)
	Oklahoma—Other (at 14.65 psia)								
[9] 330	Northeast Cedardale	**Michigan Wisconsin Pipe Line Co.**	**CI61-516**	15.0000 [10]					15.0000.[11]
	Oklahoma Panhandle (at 14.65 psia)								
296	Mocane	Transwestern Pipeline Co.	CI61-814	17.0000					17.0000.
299	do	do	CI61-967	17.0000					17.0000.
300	do	do	CI61-981	17.0000					17.0000.
[9] 330	Northeast Cedardale	Michigan Wisconsin Pipe Line Co.	CI61-516	17.0000					17.0000.
[12] 331	Laverne	do	CI62-1219	17.0000					17.0000.
[13] 344	Woodward	do	CI63-336	17.0000					17.0000.
[14] 345	do	do	CI63-337	17.0000					17.0000.
	San Juan, N. Mex. (at 15.025 psia)								
[15] 233	Otero Graneros	El Paso Natural Gas Co.	G-15820	14.0000	RI63-481 [16]	14.0578 [17]	6	D	13.0000.
					RI64-388 [16]	15.0619	7	D	
411	Ute Dome Paradox	do	CI65-95	13.0000(43)					11.7500.[18]
	Colorado (at 15.025 psia)								
[19] 346	Flodine Park	do	CI63-390	15.0000 [20]					15.0000.

	Wyoming (at 15.025 psia)								
307	Big Piney	do	CI61-1428	15.0000 at 860 psig. 15.3840 at more than 860 psig.	RI62-384	16.0000	30		15.0000.[2]
	Arizona (at 14.65 psia)								
389	Bita Peak	do	CI64-964	15.0000					15.0000.[22]
	South Louisiana (at 15.025 psia)								
[23] 173	South Pecan Lake	United Fuel Gas Co.	G-3216	20.0000					18.3750.

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[1] Unless otherwise indicated, all rates are expressed in cents per Mcf at the pressure base shown for the Commission pricing area in which each field is located. Unless otherwise indicated, all rates include applicable tax reimbursement and are subject to Btu adjustment as provided in the various contracts.

[2] Settlement rate at the area rate for increased rates under Sections 2.56(b)(1) and 2.56(c)(1) of FPC rules of practice and procedure. Where necessary, contract term to be extended so contract will remain in effect a minimum of 5 years from the effective date of the settlement herein.

[3] Supplement Nos. 5 and 6 only (acreage additions).

[4] Temporary certificate issued at 17.5 cents with refund floor of 16.0 cents. Commission authorized sale at 17.0 cents in *Hawkins* decision.

[5] Authorized by Commission in *Turnbull & Zoch* proceeding.

[6] Rate shown includes charge for services performed by seller.

[7] Temporary certificate issued with refund floor of 14.5 cents.

[8] Basic contract and acreage additions set out in Supplement Nos. 2, 3, 4, and 5.

[9] Supplement No. 24 only (acreage addition). Covers acreage in both Oklahoma—Other and Oklahoma Panhandle.

[10] Last firm rate is 17.0 cents per Mcf for the portion of sales applicable to Oklahoma Panhandle area.

[11] Subject to upward adjustment to area price for new gas if the area boundary between Oklahoma Panhandle area and other Oklahoma area is changed.

[12] Supplement No. 8 only (acreage addition).

[13] Supplement No. 8 only (acreage addition).

[14] Supplement Nos. 8 and 9 only (acreage additions).

[15] Supplement No. 3 only (acreage addition).

[16] This docket terminated as to this supplement.

[17] These 4(e) cases are applicable only to the increase in tax reimbursement resulting from an increase in the New Mexico emergency school tax.

[18] Price applies to corrected volumes at plant outlet, computed in accordance with subject contract.

[19] Basic contract and supplement No. 2 (acreage addition).

[20] Initial sale: Temporary certificate at 17.7 cents with refund floor of 15.0 cents. Sale from added acreage: Temporary certificate conditioned price to 15.0 cents.

[21] 15.3840 cents for gas above 860 psig.

[22] Subject to service charge deductions as provided by contract.

[23] Supplement No. 18 only (acreage addition).

[24] See the settlement proposal of Pan American for an explanation of categories.

APPENDIX C

PAN AMERICAN PETROLEUM CORP.

Section 4(e) dockets severed from consolidated area rate proceeding, docket Nos. AR61-2, AR64-1, AR64-2

[Docket No. G-9279, *et al.*]

AR61-2		AR64-1		AR64-2	
G-8614	RI60-126	G-17315	RI61-272	G-9933	RI60-300
G-9500	RI60-239	G-17985	RI62-2	G-11000	RI61-123
G-9603	RI61-4	G-18949	RI62-236 [2]	G-13063	RI61-135
G-10144	RI61-136	G-20304	RI62-314	G-13064	RI61-183
G-11331	RI61-137		RI62-329	G-13118	RI62-97
G-11332	RI61-183 [1]	RI60-208	RI62-377	G-13469	RI62-261
G-11446	RI61-294	RI60-209	RI62-500	G-13677	RI62-314
G-12285	RI61-401	RI60-210	RI63-3	G-15506	RI63-138
G-13442	RI61-548 [2]	RI60-254	RI63-244	G-15507	RI63-139
G-13564	RI62-98	RI60-271	RI63-250	G-16087	RI63-360
G-14730	RI62-99	RI61-6	RI63-353	G-16088	RI64-196
G-16514	RI62-356		RI63-457	G-16677	RI64-205
G-16515	RI62-359 [2]		RI63-469	G-17085	RI64-351
G-16516	RI63-119		RI64-46	G-17128	RI64-352
G-18106	RI63-138 [1]		RI64-411	G-17129	RI64-411
G-19482 [1]	RI63-144 [1]		RI64-417	G-19004	RI64-417
G-19641	RI63-387 [1]		RI64-536	G-19481	
G-19642	RI63-389 [2]			G-19482	
G-19654				G-19579	
				G-19611	

[1] Insofar as it pertains to sales from the area indicated.

[2] Severed insofar as it pertains to the interests of Pan American Petroleum Corp.

APPENDIX D

PAN AMERICAN PETROLEUM CORP.

Section 4(e) dockets to remain open pending resolution of New Mexico tax controversy

[Docket No. G-9279, *et al.*]

Section 4(e), docket No.	Rate schedules and supplements affected by tax controversy	
	Rate schedule No.	Supplement No.
RI63-481	93	4
	124	6
	291	1
	302	2
	320	1
	370	18
RI64-532	124	8
RI63-483	163	10
	195	14
RI64-533	163	12
	195	18
RI64-59	195	16
RI64-523	291	3
RI64-298	320	2
RI66-163	370	20
	377	13
RI64-97	376	4
RI66-157	376	6
	378	13
RI64-192	377	11
	378	11

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, PROJECT NO. 2100

ORDER MODIFYING PROJECT LICENSE

(Issued April 15, 1966)

On January 12, 1965, the Department of Water Resources of the State of California, licensee for Project No. 2100, filed for Commission approval an application and attached Exhibit L drawings showing proposed changes in the license requirements (Article 38) for clearing the proposed Oroville Reservoir of the project which is located on the Feather River and its tributaries in Butte County, California and affects lands of the United States within the Plumas and Lassen National Forests and other lands held in trust by the United States for Indians.

Article 38 requires, among other things, the complete clearing of all lands in the bottom and margin of the Oroville Reservoir between certain stated elevations and the cutting of all trees and brush within the reservoir so that no part thereof shall protrude above a stated elevation.

Under the aforementioned application and attached Exhibit L drawings, vegetation in certain coves of the Oroville Reservoir would be retained for the enhancement of fish and wildlife. It appears that the proposed restrictive clearing was originated by the California Department of Fish and Game in cooperation with the California Department of Conservation, the California Department of Parks, the U.S. Forest Service and the Fish and Wildlife Service of the Department of the Interior.

The U.S. Forest Service has advised that the proposed restrictive clearing proposal will not affect adversely the protection of the Plumas and Lassen National Forests.

The Department of the Interior has advised that its Fish and Wildlife Service concurs in the restrictive clearing proposal as an improvement and contribution towards increased fishing and hunting benefits.

The Department of Health, Education, and Welfare has advised that while the execution by the licensee of the restricted clearing proposal is not expected to create or intensify water supply or water pollution problems, the Department recommended that the licensee maintain liaison with the Bureau of Vector Control, California State Department of Public Health, for specific guidance on clearing operations related to vector prevention and control. This recommendation is included in modified Article 38 of the license.

We are informed by the Department of the Interior that certain lands held in trust by the United States for Indians, which would be affected by the construction of the project, have been conveyed to the State of California. The sale was authorized by Act of Congress of August 20, 1964 (Public Law 88–453). According to the deed of conveyance, a copy of which was transmitted to us by the Department of the Interior by letter dated October 18, 1965, the conveyance was executed on January 22, 1965. In the circumstances, it is appropriate to further modify the license for Project No. 2100 to eliminate therefrom Article 35 which provides for compensation by the licensee to affected Indians for damage to Indian properties caused by construction of the project.

The Commission finds:

It is consistent with the public interest to modify the license for the project to the extent herein ordered.

The Commission orders:

(A) The following described Exhibit L drawings, each entitled "Oroville Reservoir Vegetation Retention Areas", are hereby approved as part of the license for Project No. 2100:

Exhibit L-19 (FPC No. 2100-93)
Exhibit L-20 (FPC No. 2100-94)
Exhibit L-21 (FPC No. 2100-95)

(B) The license for Project No. 2100 is hereby modified to eliminate therefrom Article 35, and to modify Article 38 to reflect the changes shown on the approved Exhibit L drawings with respect to restrictive clearance of Oroville Reservoir and HEW's recommendation: said modified Article 38 to read as follows:

Article 38. The Licensee shall, prior to impounding water, clear all lands in the bottoms and margins of the reservoirs of Thermalito Diversion Dam, Thermalito Forebay Dam, and Thermalito Afterbay Dam. The Licensee shall, prior to impounding water in the reservoir of Oroville Dam, (except for the selected coves shown on the exhibits described in paragraph (A) above for enhancement of fish and wildlife) clear all land in the bottom and margin of the reservoir of Oroville Dam between high water elevation 900.0 (U.S.C. & G.S. datum, 1929 adjustment), and a plane at elevation 640.0 (U.S.C. & G.S. datum, 1929 adjustment), and shall cut all trees and brush within the elevation 640.0 contour area so that no part thereof will protrude above said elevation; shall clear and keep clear to an adequate width lands of the United States along open conduits; and shall dispose of all temporary structures; unused timber, slash, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the high-water line of the reservoirs which die during the operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission. Licensee shall maintain liaison with the Bureau of Vector Control, California State Department of Public Health, for specific guidance on clearing operations related to vector prevention and control.

(C) This order is effective as of March 1, 1966.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

VILLAGE OF HARRISONBURG, LOUISIANA AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-267

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 15, 1966)

On February 14, 1966, the Village of Harrisonburg, Louisiana (Applicant), filed in Docket No. CP66-267 an application pursuant to Section 7(a) of the

Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution by Applicant in the Village of Harrisonburg, and in the communities of Enterprise, Manifest, Wallace Ridge and in other rural areas located in the Northwestern section of Catahoula Parish, Louisiana, all as more fully set forth in the application.

Applicant proposes to construct a gas transmission system extending from a point of interconnection with the facilities of Respondent, to be located in the vicinity of Louisiana Highway 124 where Respondent's main transmission line crosses the highway to the Village of Harrisonburg, and consisting of approximately 94,000 feet of 3-inch pipeline and a regulator station. Applicant also proposes to construct, own and operate a natural gas distribution system which will provide gas service for the aforementioned communities. Applicant states that its proposed service area will include approximately 596 residential, 16 small commercial and 8 large commercial customers by the end of the third year of proposed operations.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

Mcf	First year	Second year	Third year
Annual	39,648	52,248	58,128
Peak day	489	651	727

The total estimated cost of Applicant's proposed gas transmission and distribution systems is $500,000, which cost will be financed by the issuance of revenue bonds.

Respondent was duly notified by letter of the Commission dated February 16, 1966, of the filing of the application in this matter. Respondent did not make any objection to granting the application or to the rendition of the requested service.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on March 4, 1966 (31 F.R. 3435). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Village of Harrisonburg, Louisiana, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Tennessee to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Tennessee in accordance with the Commission's Regulations, up to 727 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Tennessee for distribution in the Village of Harrisonburg, Louisiana, within one year from the date of the issuance of this order.

(5) The requirement that Tennessee serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell up to 727 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Tennessee in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Tennessee's presently filed appropriate rate schedule.

(B) Tennessee shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

M. F. MCCAIN (OPERATOR), ET AL., DOCKET NO. CI66-181

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 15, 1966)

On September 3, 1965, M. F. McCain (Operator), *et al.* (Applicant) filed in Docket No. CI61-181 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corporation (Texas Gas) from the Maurice Field, Lafayette and Vermilion Parishes, Louisiana, at a total initial rate of 20.625 cents per Mcf at 15.025 psia, all as more fully set forth in the application.

By letter dated February 3, 1966, Applicant agreed to accept a permanent certificate conditioned to provide that the amount of reimbursement for additional taxes shall be limited to fifty percent.

Concurrently with the subject application Applicant submitted its contract with Texas Gas which has heretofore been accepted for filing as Applicant's FPC Gas Rate Schedule No. 5.

The contract between Applicant and Texas Gas provides that deliveries in excess of the maximum contract quantity if deliverability is higher than that quantity, a provision that quantities taken in excess of the annual minimum takes will be deleted from subsequent minimum-take obligations, a build-up in daily contract quantity from 7,287 Mcf per day to 10,410 Mcf per day on January 1, 1971, a five-year make-up period for deficient takes, stringent deliverability requirements in that Applicant must sustain a deliverability of the contract quantity for fourteen consecutive days with failure to do so resulting in a reduction in contract quantity, a buyer's option to include reserves developed in excess of 170,030,000 Mcf, a delivery pressure of 1,100 psig, and a firm rate of 20.625 cents per Mcf for the first ten years of the contract.

While the initial price is in excess of the Commission's "in-line" determination, it is below the guideline price set forth in the Statement of General Policy No. 61-1 and combined with other contract provisions more favorable than those usually provided in this area. Therefore, the application will be granted.

After due notice no protests to the granting of the application have been received. A notice of intervention was filed by the Public Service Commission of the State of New York on October 11, 1965, and withdrawn on February 11, 1966. Petitions for leave to intervene were filed by Long Island Lighting Company on October 7, 1965, and Brooklyn Union Gas Company on October 8, 1965, and were withdrawn on November 1, 1965, and February 17, 1966, respectively. A petition for leave to intervene in opposition to the granting of the application was filed by The Philadelphia Gas Works Division of The United Gas Improvement Company on October 6, 1965, and amended on October 11, 1965. By letter dated February 14, 1966, the latter petitioner advised the Commission that it would not apply for rehearing of an order granting the subject application but that it does not concur in the granting of the application. On October 22, 1965, Texas Gas filed a petition for leave to intervene in support of the granting of the application. No further notices of intervention or petitions for leave to intervene have been received.

At a hearing held on April 7, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the application herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, M. F. McCain (Operator), *et al.*, is engaged in the sale for resale of natural gas in interstate commerce for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale of natural gas by Applicant is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale by Applicant of natural gas in interstate commerce for resale for ultimate public consumption, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate issued herein is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. The grant of the certificate herein for service to the particular customer involved shall not imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. The grant of the certificate herein shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) The certificate issued herein is conditioned upon the submittal by Applicant of a contract amendment as a supplement to its related rate schedule which amendment shall provide for a reduction in future tax reimbursement from seventy-five percent to fifty percent.

Commissioner Ross *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP66-284

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 15, 1966)

On March 7, 1966, Michigan Gas Storage Company (Applicant) filed in Docket No. CP66-284 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to use its existing facilities for the transportation, of up to 350,000 Mcf of natural gas per day for and in behalf of its sole customer, Consumer Power Company (Consumers), all as more fully set forth in the application.

By order of the Commission issued in Docket No. CP65-245 on April 13, 1965, 33 FPC 727, Applicant was authorized to transport up to 275,000 Mcf of natural gas per day for and in behalf of Consumers commencing November 1, 1965. The gas contemplated by said authorization was to be supplied to Consumers by Trunkline Gas Company (Trunkline). An amendment dated December 29, 1965, to an agreement between Consumers and Trunkline dated October 29, 1963, provides, *inter alia*, for the delivery to Consumers of 350,000 Mcf of gas per day commencing November 1, 1966, 400,000 Mcf per day commencing November 1, 1967, 450,000 Mcf per day commencing November 1, 1968, 500,000 Mcf per day commencing November 1, 1969 and 575,000 Mcf per day commencing November 1, 1970. The Commission on February 11, 1966, in Docket No. CP66-131, 35 FPC 224, approved, *inter alia*, the 1966 increase in deliveries by Trunkline to Consumers.

In connection with the receipt by Consumers of the additional deliveries from Trunkline commencing November 1, 1966, pursuant to the aforementioned order issued in Docket No. CP66–131, Applicant desires to commence transporting, for and in behalf of Consumers, up to 350,000 Mcf of natural gas per day commencing November 1, 1966. These transportation services will be provided by Applicant without any additional facilities and all costs arising from said service will be passed on to Consumers pursuant to Applicant's cost of service tariff.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 14, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Delaware corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The proposed transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid transportation of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Michigan Gas Storage Company in this proceeding, authorizing the transportation of up to 350,000 Mcf of natural gas per day commencing November 1, 1966, as described hereinbefore and more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLAMBEAU POWER COMPANY, PROJECT NO. 2421

ORDER ISSUING LICENSE (MINOR)

(Issued April 19, 1966)

Application was filed on October 31, 1963 by Flambeau Power Company (Applicant) of Park Falls, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2421, known as Lower Hydro-Electric, located on North Fork, Flambeau River in the City of Park Falls, in Price County, Wisconsin. No lands of the United States are affected by the project.

The project was originally constructed in 1896. In 1922 and the year following the project was rebuilt and the present generating units totalling 1,500 kva were installed.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license for the project, terms and conditions in the interests of fish and wildlife and recreational resources usually included in licenses for such projects, and a special condition for the protection of such resources—all as provided for in Articles 4 and 7 of attached Form L-9 and Article 12.

The Department of Health, Education, and Welfare has advised that there does not appear to be any pollution problem caused or intensified by the operation of the project.

The Conservation Department of the State of Wisconsin recommended that any license for the project contain provisions in the interests of public recreation, as provided for in Article 4 of attached Form L-9 and Article 13 herein.

In a proceeding on an application for license filed by Lake Superior District Power Company for Project No. 2390 on the Flambeau River, the Commission on May 25, 1965, 33 FPC 1067, found that the Flambeau River from its confluence with the Chippewa River to at least the North and South Forks of the Flambeau is a navigable water of the United States. In the same order, the Commission stated that after the long supply had been depleted on the lower tributaries of the Chippewa, logs were floated down the Flambeau and that during the log season from 4,000 to 5,000 men were employed on the North and South Forks of the Flambeau and on its tributaries, the Jump and Elk Rivers and their tributaries, in connection with running logs on those streams. Additional research reveals that logging was an inducement to the settlement around 1876 of Park Falls on the North Fork, Flambeau River and became an important industry of that town. The logs, cut from dense forests of pine, hemlock and hardwood located upstream and in the vicinity of Park Falls, were floated down the Flambeau River into the Chippewa to Chippewa Falls and Eau Claire, with a considerable number continuing down the Chippewa into the Mississippi River as far downstream as St. Louis. Lower Hydro-Electric Project No. 2421 is located at Park Falls on North Fork, Flambeau River at approximately river mile 95 above the confluence of the Flambeau and Chippewa Rivers.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company*, Project No. 2347, *et al.* (33 FPC 275) we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The North Fork, Flambeau River and the South Fork, Flambeau River are navigable waters of the United States.

(2) Lower Hydro-Electric Project No. 2421 is located on navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,600 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves: 10(d); 10(f); 14, except insofar as the power of condemnation is reserved: 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Flambeau Power Company of Park Falls, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2421, located on the North Fork, Flambeau River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2421 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) A concrete gravity type dam 186 feet long and 32 feet high with earth filled abutments, a reservoir about 1.6 miles in length, headgates and trashracks, a log sluiceway, a powerhouse containing three turbines direct-connected to three generating units totaling 1,500 kva, a substation and appurtenant mechanical and electrical facilities.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 757), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall provide minimum water releases from the reservoir into the river below the dam amounting to 300 c.f.s. or the natural inflow, whichever is less.

Article 13. The Licensee shall provide land at no cost and cooperate with the State and local agencies in developing and maintaining access roads, areas, a canoe portage, and such facilities needed for full public utilization of outdoor recreation opportunity, including fishing and hunting, at the project consistent with the terms of the license and the operation of the project.

Article 14. The Licensee shall pay to the United States the following annual charge effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, an annual charge of $80.00.

(D) The terms and conditions of the Act, which it has been found to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 488

KNOXVILLE UTILITIES BOARD, ET AL. v. EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. RP65-4

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER DETERMINING RATES

(Issued April 19, 1966)*

1. Costs of recent major extension should be included in Respondent's cost-of-service on a "rolled-in" basis. P. 537.

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*Initial decision appears on P. 546.

2. Although not a part of Company's system at end of test year, extension was constructed and costs thereof incurred well within nine month adjustment period provided in Section 154.63(e)(2) of the Regulations. P. 537.
3. Recognizing general principle favoring treatment of individual pipeline as a unified entity wherever possible, Commission *concludes* there is not sufficient reason here to exclude new extension from cost-of-service. P. 537.
4. Judgment as to economic feasibility of extension was made on basis of estimated revenue of third year as submitted by pipeline in certificate proceeding. P. 537.
5. While Commission policy encourages maximum reasonable extension of natural gas service by pipelines, companies must realize that incremental rate of return during initial development period will, in most instances, be less than return on system as a whole. P. 537.
6. It is proper to use third year estimated operational revenues for new extension in establishing East Tennessee's rates here. P. 537.
7. Factors, beyond mere temperature alone, which must be considered and lack of adequate evidence precludes allowance for claimed weather normalization adjustment. P. 538.
8. While not concluding that weather normalization adjustments can never be effected, Commission cautions that a high standard of proof will be required to establish a variance from actual test period experience. P. 538.
9. Amortization of claimed regulatory expense over a five-year rather than a three-year period is proper. P. 538.
10. Finding Relative Use Method of cost allocation not yet sufficiently refined for application to East Tennessee or pipelines in general, Commission continues use of *Atlantic Seaboard* method here. P. 539.
11. For the interim, East Tennessee's cost-of-service tax allowance is computed on basis of straight-line depreciation conditioned on additional rate reductions in event liberalized depreciation is found appropriate in separate proceeding. P. 539.
12. It was proper to exclude balance in Account 282, Accumulated Deferred Income Taxes—Liberalized Depreciation, from the rate base, allowing no return thereon. P. 540.
13. Commission *concludes* that 6.5 percent is just and reasonable rate of return for East Tennessee. P. 541.
14. In a proceeding under Section 5(a) of the Natural Gas Act, Commission *determines* just and reasonable rates for East Tennessee Natural Gas Company.

Commissioner O'Connor *concurring with one exception.*

James L. Bomar, Jr. and *John C. Shofner* for Knoxville Utilities Board, United Cities Gas Company, Volunteer Natural Gas Company, Cleveland Natural Gas Company, Athens Utility Board, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Englewood Natural Gas System, First Utility District of Maury County, Gallatin Natural Gas System, Harriman Utility Board, Jefferson-Cocke Utility District, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utilities Board, Madisonville Gas Company, Marion County Natural Gas Company, Middle Tennessee Utility District, Oak Ridge Utility District, City of Rockwood Natural Gas Company, Sevier County Utility District, City of Sweetwater, Unicoi Natural Gas Utility District.

W. D. Spears, Norman T. Hayes, Jr. and *J. David Mann, Jr.* for Chattanooga Gas Company.

William W. Bedwell, Frank E. Barnett, Harold L. Talisman and *H. F. Aby* for East Tennessee Natural Gas Company.

Eugene W. Ward and *George Shuff* for Tennessee Public Service Commission.

Wilbur L. Hazlegrove for Roanoke Gas Company and Colonial Natural Gas Company.

Samuel B. Ross for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

This proceeding arose as a result of a formal complaint under Section 5(a) of the Natural Gas Act filed by a group of gas distribution companies, municipalities, and political subdivisions of the State of Tennessee (Knoxville, *et al.*) against their natural gas pipeline supplier, East Tennessee Natural Gas Company (East Tennessee). The complaint alleged that based on the principles employed by the Commission in its last determination of the rate levels of East Tennessee and using data contained in the 1963 Annual Report to the Federal Power Commission, the jurisdictional revenues being collected by East Tennessee are excessive and, consequently, that its rates are not at the lowest reasonable level. By order dated October 22, 1964, 32 FPC 1161, an investigation was instituted into the reasonableness of the rates and charges levied by East Tennessee, with interventions by Chattanooga Gas Company (Chattanooga), Roanoke Gas Company and Colonial Natural Gas Company (Virginia Interveners), the Tennessee Public Service Commission and the State Corporation Commission of Virginia.

The proceeding is a complete rate determination of East Tennessee encompassing the issues of proper costs and cost levels, rate of return, rate base cost allocation, rate design and zone rate differentials. In addition, there is an issue of whether or not to include the estimated cost and revenues of a recent major extension of facilities into a new territory. The case is before us at this time for decision on exceptions[1] to Examiner Seymour Wenner's decision issued August 23, 1965, *infra* p. 546, which would have required East Tennessee to reduce its system-wide rates by approximately $700,000 commencing in December 1965, with a further decrease of $119,000 to be effective in December 1966.

In general, we conclude that the Examiner properly determined each of the substantial issues, but that relatively minor adjustments should be effected on certain points. The matter of the Federal income tax allowance to be included in the cost-of-service will be discussed separately since our present disposition of this issue will be only an interim treatment, rather than the final resolution proposed by the Examiner.

Four of the parties requested opportunity for oral argument before the Commission. Except for the tax item we concluded, as expressed in our February 24, 1966 order, that the issues have been fully briefed and that oral argument hereon was unnecessary. We affirm that ruling herein.

1. *Treatment of Virginia Extension*

The Virginia extension was certificated in Opinion No. 435 and order issued July 17, 1964.[2] Construction was begun in October 1964 and completed in

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[1] Filed by East Tennessee, Knoxville, *et al.*, Chattanooga and the Staff. Briefs opposing exceptions also were filed by these parties, as well as by the Virginia Interveners.

[2] *East Tennessee Natural Gas Company*, Docket No. CP64-21, 32 FPC 158, rehearing denied 32 FPC 734.

December of the same year. The extension constitutes Zone 3 of East Tennessee's system. Although service to Roanoke Gas Company began immediately upon construction of the extension, the start-up of Colonial Natural Gas Company was delayed by its inability to get its distribution lines timely laid. East Tennessee indicated in the record that limited service was to begin to Colonial in May 1965 and that the first full year's operations were to have commenced in December 1965.

The test period agreed to by all parties in this proceeding for determining the reasonableness of East Tennessee's rates and charges is the year ending September 30, 1964. The issue is whether the cost-of-service should be adjusted to reflect the added facilities involved in the Virginia extension. Further, if it is determined that these facilities are to be included, it then becomes necessary to fix the appropriate revenue adjustment to match the test year cost-of-service.

We agree with the Examiner, and with the position of most of the parties, that the costs of the Virginia extension should be included on a "rolled-in" basis. The extension is in service and will be almost fully operational when the rates herein prescribed become effective. Although not a part of East Tennessee's system at the end of the test year, it was constructed, and the costs thereof were incurred, well within the nine month adjustment period provided for in Section 154.63(e)(2) of the Regulations under the Natural Gas Act. In short, and recognizing the general principle favoring the treatment of the individual pipeline as a unified entity wherever possible,[3] we conclude that no sufficient reason has been advanced for excluding the Virginia extension from the cost-of-service.

We do not accept, however, the two step revenue adjustment made in the Examiner's initial decision, that is, using second year estimated revenues to fix rates until December 18, 1966, and third year revenues to determine the rates thereafter. Our judgment as to the economic feasibility of the extension was made on the basis of the estimated revenue results of the third year as submitted to us by East Tennessee in seeking its certification. While it is our policy to encourage the maximum reasonable extension of natural gas service by pipelines under our jurisdiction,[4] these companies must realize that the incremental rate of return during the initial developmental period for such extensions will, in most instances, be less than the return rate on the systems as a whole. In applying for and receiving authorization to extend its lines into a new area, the pipeline is presented with an opportunity for expansion and increased revenues; as with most businesses, however, it must expect to underwrite a share of the developmental expenses incident to the opportunity thereby provided for increased earnings in the later period.

East Tennessee's sales and revenue estimates for the Virginia extension are lower than the original estimates submitted in the certificate proceeding in that the Colonial revenues are shown to lag one year behind the original estimate. Thus, a significant adjustment has already been made to the third year operating revenues. In our opinion the third year estimated operational revenues of $2,152,000, reflecting anticipated sales of 3,850,558 Mcf is the proper figure to be used in establishing East Tennessee's rates in this proceeding.[5] Whether this same conclusion will be reached in cases involving similar situations will depend upon the circumstances present in those cases.

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[3] *Battle Creek Gas Co.* v. *F.P.C.*, 281 F. 2d 42 (CADC–1960) and cases cited, footnote 9 at p. 46.

[4] *Southern Natural Gas Company*, Opinion No. 424, 31 FPC 789, 796.

[5] Accord, *Midwestern Gas Transmission Co.*, 24 FPC 303, rehearing denied, 24 FPC 844; affirmed *Midwestern Gas Transmission Co.* v. *F.P.C.*, 292 F. 2d 119 (CA5–1961).

In its desire to expeditiously construct the Virginia extension, East Tennessee incurred construction costs exceeding the original $5,139,000 estimate by $1,908,000, an excess of 37 percent. *Knoxville, et al.*, contends that the record herein is not sufficiently complete to determine whether the excess costs were prudently incurred. While it does not ask for elimination of the "crash program" construction costs, it does request that the Commission not resolve this item and reserve Knoxville's opportunity to question the expense in a later proceeding.

The final costs for the Virginia extension were not known until East Tennessee submitted its rebuttal material. While we shall include the entire $7,047,000 cost in the cost-of-service in this case, such action should not be construed to foreclose Knoxville's or any other parties' right, within a reasonable period, to question the appropriateness of any part thereof at a later suitable occasion.

2. *Other Test Year Adjustments*

East Tennessee has excepted to the Examiner's refusal (1) to effect a claimed weather normalization adjustment, and (2) to adjust the future sales to Chattanooga to reflect the loss of certain sales of interruptible gas now purchased by Chattanooga for resale to the Farmer's Chemical Association, an industrial consumer. We are in accord with the Examiner's disposition of these issues. The variety of other factors, beyond mere temperature alone, which must be considered and the lack of evidence adequate to prove the representative of the temperatures submitted as the basis for the adjustment preclude the allowance of an adjustment in this case. While we do not conclude that a weather normalization adjustment can never be effected, we do caution those seeking to claim such a variation, whether upward or downward, that a high standard of proof will be required to establish a variance from actual test period experience.

The matter of the Farmer's Chemical sale by Chattanooga is currently under Commission review on consideration of the exceptions filed to the initial decision in the comparative certificate proceeding at Docket No. CP64–270, *et al.* At this time no decision has been reached on whether another supplier will be certificated to satisfy the needs of Chattanooga and the Association. Apart from the prejudgment which would be involved, an adjustment in this case to meet only one of the possible outcomes of that proceeding would not be in order. Moreover, the adjustment would be for a change, if any, occurring almost two years after the close of the test period, well beyond the normally accepted interval.[6] We further find that the condition suggested by East Tennessee that it flow-through all net revenues from the Chattanooga-Farmer's Chemical sale if we ultimately allow the company to continue to make the sale is not appropriate because we cannot assume that the loss of the sale would in fact result in a reduction in the net jurisdictional revenues.

Next, East Tennessee contends that the Examiner erred in amortizing its claimed regulatory expense, $152,400, over a five-year period rather than three years. The difference would add $20,800 to the cost-of-service. East Tennessee's last formal rate hearing was in 1959. Five years is the normal amortization period, with exceptions being limited to their peculiar factual circumstances. Normalization at $30,000 per year meets fully the foreseeable needs of East Tennessee. The exception is denied.

The Examiner deducted $60,000 from operating expenses on the Virginia extension facilities based on an estimated saving in this amount from automation of the Tri-Cities and Glades Springs compressor stations. The estimate of the annual savings was made by East Tennessee's witness. Since East Tennessee's ratepayers will be paying the fixed charges incident to the additional investment, it was appropriate for the Examiner to adjust his operating expense allowance to reflect the cost saving.[7]

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[6] *United Gas Pipe Line Company*, Opinion No. 428, 31 FPC 1180, 1186; Opinion No. 428–A, 32 FPC 687, 689; rehearing denied 32 FPC 879.

3. *Method of Allocation to Determine Jurisdictional Costs*

In past decisions[8] we have had occasion to express our growing disfavor of the principles of classification established in *Atlantic Seaboard Corp.*, Opinion No. 225, 11 FPC 43, and *Northern Natural Gas Co.*, Opinion No. 228, 11 FPC 123, and commonly referred to as the *Atlantic Seaboard* formula. While continuing to show a standard *Seaboard* allocation, staff introduced a new allocation method, denominated Relative Use, as a "possible alternative." The Relative Use method, its distinguishing characteristics and its asserted advantages over *Seaboard* are fully described in the Examiner's decision.

We have considered the Relative Use method and find that it is not yet sufficiently refined for application to East Tennessee or to pipeline companies in general. On this record staff has failed to supply the evidentiary support necessary to justify the method. Although we will require our staff to direct further attention to allocation methods in hope that improvements will be forthcoming, we shall continue to follow the *Atlantic Seaboard* method of cost classification in this proceeding.

4. *Federal Income Tax Allowance*

East Tennessee had been using liberalized depreciation since 1954, as permitted by Section 167 of the Internal Revenue Code. In December 1964, after the institution of this proceeding, East Tennessee's board of directors instructed its officers to convert to straight-line depreciation and to use this for its 1964 Federal tax return, due September 15, 1965. East Tennessee has now filed its tax return on the basis of straight-line depreciation and any future change can be made only with the approval of the Commissioner of Internal Revenue. The issue is whether the tax allowance in the cost-of-service should be based on liberalized or straight-line depreciation in this circumstance.

The Examiner concluded that the test period cost-of-service should be based on liberalized depreciation, irrespective of how East Tennessee chooses to file its tax return. East Tennessee's exceptions on this item are not before us for consideration at this time since, by order issued February 24, 1966, 35 FPC 249, we in effect severed this one issue from the others and consolidated it for oral argument with the identical reserved issue in *Midwestern Gas Transmission Company*, Docket Nos. RP61-19, RP62-7 (Reopened). Oral argument was held April 5, 1966. Accordingly, in accordance with our action in a number of other cases,[9] we shall, for the interim, compute East Tennessee's cost-of-service tax allowance on the basis of straight-line depreciation with a condition requiring additional rate reductions in the event liberalized depreciation is found appropriate in the decision in the consolidated proceedings.

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[7] No exceptions were taken to the disallowance of minimum bank balances and special deposits in working capital. The credit to working capital has been revised from 41.55% to 30.00% of the current portion of F.I.T. to take into account the enactment on March 15, 1966, of the Tax Adjustment Act of 1966.

[8] See *Southern Natural Gas Co.*, Opinion No. 379, 29 FPC 323, 341–42; *United Fuel Gas Co.*, 31 FPC 1342, 1347–48; *Midwestern Gas Transmission Co.*, Opinion No. 477, 34 FPC 973, pp. 981, 982.

[9] *Midwestern Gas Transmission Co.*, Opinion No. 444, 32 FPC 993, 996; *Alabama-Tennessee Natural Gas Co.*, Docket No. RP65-58, 34 FPC 767, order issued September 8, 1965.

Assuming, *arguendo*, that liberalized depreciation is required, one of the issues will be the time at which such recomputation should be made effective. It would be inappropriate, therefore, to specify any effective date at this time.

Pursuant to *Alabama-Tennessee*, Opinion No. 417, 31 FPC 208, staff and the Examiner deducted the balance, $244,400, in Account No. 282, Accumulated Deferred Income Taxes—Liberalized Depreciation, from the rate base, allowing no return thereon. East Tennessee has excepted on the ground that its rates should not be reduced for this item until the *Alabama-Tennessee* decision is judicially reviewed and finally affirmed.[10] In that event East Tennessee says that it will refund to the date new rates become effective herein the amounts owed thereby.

On March 25, 1966, the Court of Appeals for the Fifth Circuit issued its decision on review of *Alabama-Tennessee* unanimously affirming Opinion No. 417. There is thus no valid reason for affording any treatment to these balances other than their complete excision from the rate base. The balance in Account No. 282 will be excluded.

5. *Rate of Return*

Knoxville, *et al.* suggests a 5.75 percent rate of return, staff recommends 6.5 percent and East Tennessee seeks 7.25 percent. East Tennessee's capitalization is approximately 35 percent equity, 65 percent debt. A 6.5 percent rate overall yields 8.53 percent on equity, compared to 6.38 percent at the 5.75 percent rate and 10.68 percent on equity at 7.25 percent.

East Tennessee is 91 percent owned by Tennessee Gas Transmission Company. Both staff and Knoxville urge recognition of this fact through cognizance of the return allowed the parent on its common equity invested in the common equity of East Tennessee, *i.e.*, the "double leverage" argument.[11] The place of the "double leverage" theory in fixing a pipeline's rate of return was considered most recently in the *Midwestern* case.[12] While refraining from placing any particular reliance thereon, we did conclude that this information is helpful in showing that the return on equity to a subsidiary is not a measure of the return to the parent's stockholders whose funds have been invested in the subsidiary.

The *Midwestern* decision supports the 6.5 percent rate of return recommended by staff and the Examiner. Both companies are almost wholly owned subsidiaries of Tennessee Gas Transmission Company; the somewhat higher return on equity allowed Midwestern, 9.26 percent, is largely offset by the greater equity capitalization of East Tennessee.[13] In both cases the rate seemingly would be adequate to attract all necessary capital.[14] Moreover, as brought out by the Examiner, East Tennessee has a substantial nonjurisdictional business, adequate at a 6.5 percent rate to produce a total return on equity of 11.7 percent. While the rate of return we determine here for the jurisdictional business is the rate we deem necessary if the jurisdictional business is to provide its fair share of the return to which East Tennessee is entitled, we are not precluded from considering the total return thereby resulting in determining the rate of return necessary for maintenance of the jurisdictional operations.[15]

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[10] *Alabama-Tennessee Natural Gas Co.* v. *F.P.C.*, CA5, No. 21610.

[11] The levered return at the various recommended rates are: 5.7%=10.66%; 6.5%=18.46%; 7.25%=26.29%.

[12] 32 FPC at pp. 998–1000.

[13] 34.81% compared to Midwestern's 19.66%.

[14] There is nothing in this record to indicate that East Tennessee has any plans for raising additional equity funds in the public market.

[15] *Alabama-Tennessee Natural Gas Co.*, Opinion No. 360, 27 FPC 1180, 1189 (1962); *Mississippi River Fuel Corp.*, Opinion No. 234, 11 FPC 288, 299 (1952).

In essence, and considering fully all points made in the briefs on exceptions, we see no justification for a rate in excess of 6.5 percent. By the same token there is little warrant for a rate as low as 5.75 percent which even Knoxville, its proponent, admits is at the lower fringe of the zone of reasonableness. We conclude that 6.5 percent is a just and reasonable rate of return for East Tennessee and is in accord with the judicially established criteria.[16]

6. *Rate Design*

East Tennessee's present basic rate for Zone 1 is $3.25 demand and 28.62 cents commodity. The Zone 2 and Zone 3 rates are each 25 cents higher in the demand charge and 2.5 cents on the commodity side. Knoxville and Chattanooga, Zone 1 customers, oppose allowing the Zone 3 Virginia extension customers to participate in the rate reductions ordered from the excess earnings determination on the ground that the present Virginia rates are not sufficient to absorb fully their properly allocated costs even in the third year of projected operations.[17]

The greatest share of the excess revenues are generated in Zone 1. As determined by the Examiner, Zone 2 is operating at a slight excess and Zone 3, by its third year, will have a slight deficiency. With staff's and the Virginia customers' concurrence, he applied his rate reductions equally across the three zones. There is some merit to the claim that the Virginia extension should not share equally with Zone 1 in a rate reduction. The same argument can be made, however, albeit to a lesser extent, in regard to Zone 2. Hopefully, Zone 3 sales will increase beyond the third year forecast as time goes on [18] and the anticipated deficiency will be reduced, if not entirely eliminated. This can best be promoted by rates set as low as possible.

To the extent that East Tennessee's system is to be unitized, the zone rate differentials should be minimized to the greatest extent permissible. The fact that Zone 3 has increased transportation costs over Zones 1 and 2 is taken into account in the staff's Mcf-mile allocation method and is reflected in the existing variation in rates between the zones. The differentials are reasonable and should not be expanded. The revenue reductions will be applied equally to all three zones.[19]

No exception has been taken to the method of reducing rates set out by the Examiner. Several parties have noted, however, that he did not comply with his expressed 2:1 ratio in reducing the two-part commodity rates over the one-part rates. The omission is obviously inadvertent and has been corrected in the rates here ordered.

Knoxville excepts to the Examiner's failure to order flow-through of supplier refunds and rate reductions hereafter ordered by the Commission. East Tennessee agreed to this in its last rate settlement and has no objection to the continuance thereof. An appropriate requirement will be included.

The exceptions not discussed herein are disposed of by the Examiner's discussion or are immaterial to the result in this case. Except to the extent herein granted, all the exceptions filed are without substantial support or reasonable basis in law and should be denied. The Examiner's decision should be modified in accordance with this decision and, as so modified, should, with this opinion, constitute the decision of the Commission in this case.

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[16] *Bluefield Water Works and Improvement Co.* v. *P.S.C. of W. Va.*, 262 U.S. 679; *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591.

[17] The Zone 3 commodity rate is down slightly from the certification rate due to a recent flow-through of a reduction from TGT in purchased gas costs. Knoxville and Chattanooga seek to have the rate at least restored to the original level.

[18] Exhibit 17, Sch. 1 and 2 reflect added sales of 267,110 Mcf in the fourth year.

[19] The reductions apply only to the commodity charges. There has been no suggestion for a charge in the demand rates.

The Commission further finds:

(1) East Tennessee is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this opinion and order are sales of natural gas in interstate commerce and are subject to the jurisdiction of this Commission.

(2) East Tennessee's just and reasonable rates from and after the date of this opinion and order, subject to the provisions for refunds, reductions and adjustments set forth in Paragraphs (B) and (C) below, and until changed by further order of the Commission, are as set out in Appendix C attached hereto.

(3) East Tennessee should be required to file substitute tariff sheets, subject to the approval of the Commission, containing the rates herein found to be just and reasonable as set forth in Appendix C.

(4) East Tennessee is not entitled to any return on accumulated amounts in F.P.C. Account 282, Accumulated Deferred Income Taxes — Liberalized Depreciation, so that amounts included in Account 282 should be excluded from the rate base.

(5) The accumulated deferred tax balance in Account 282 should be maintained intact and retained by East Tennessee and withdrawn only to offset any increased taxes resulting from a decline in overall tax depreciation deductions, attributable to earlier use of liberalized depreciation, on all depreciable properties used in rendering public service, below the level of the normal tax deductions under straight-line depreciation, or until otherwise ordered by the Commission.

The Commission orders:

(A) Within 45 days from the date of issuance of this opinion and order, East Tennessee shall file substitute tariff sheets, effective as of the date of this order and satisfactory to the Commission, containing the rates herein found to be just and reasonable, as set forth in Appendix C attached hereto.

(B) The question of the depreciation to be used as a deduction in computing the tax allowance in East Tennessee's cost-of-service is reserved in accordance with the foregoing opinion and the order issued February 24, 1966. The rates herein fixed on the basis of straight-line depreciation are subject to adjustment upon further order of the Commission to reflect the Commission's final disposition of this issue.

(C) East Tennessee shall continue to flow-through all refunds and rate reductions received from Tennessee Gas Transmission Company, as agreed to in the settlement approved December 16, 1960, 24 FPC 1079.

(D) Except as heretofore granted and amended by the orders issued November 18, 1965, and February 24, 1966, the motions for opportunity to present oral argument before the Commission are denied.

(E) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

(F) The Examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

Commissioner O'Connor *concurred* in the opinion with the exception of the majority's insistence on re-emphasizing their "double leverage" theory, and he cited his separate views in *Midwestern Gas Transmission Co.*, 32 FPC at 1011–1012 (1964).

APPENDIX A

EAST TENNESSEE NATURAL GAS CO.

Cost of service adjusted for third year of operation of Virginia Extension

[Accumulated deferred income taxes, account 282, deducted from the rate base; excess liberalized depreciation over straight-line tax depreciation not used as a tax deduction in the calculation of the Federal income tax]

Item	Cost of integrated system [1]		
	Total	Demand	Commodity
Operating expense:			
Gas supply expense	$16,550,753	$4,491,786	$12,058,967
Transmission expense	536,930	246,221	290,709
Customer accounting expense	39,887		39,887
Sales expense	105,172		105,172
Administrative and general expense	515,156	187,671	327,485
Total operating expense	17,747,898	4,925,678	12,822,220
Depreciation	1,170,075	585,037	585,038
Taxes:			
Other than income	670,889	335,444	335,445
Federal income	712,596	356,298	356,298
State income	63,206	31,603	31,603
Return at 6.50 percent	1,777,045	888,522	888,523
Other gas revenues—Credit	(7,330)	(3,665)	(3,665)
Total cost of service	22,134,379	7,118,917	15,015,462

[1] Excludes Wrigley System costs.

APPENDIX B

EAST TENNESSEE NATURAL GAS CO.

Allocation of cost of service between jurisdictional and nonjurisdictional customers (adjusted for third year of operation of Virginia Extension)

[Docket No. RP65-4]

Item	Total costs			Gas supply costs		Transmission distance factor costs		Transmission nondistance factor costs [1]	
	Total	Demand	Commodity	Demand	Commodity	Demand	Commodity	Demand	Commodity
	Dollars	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*
Jurisdictional sales:									
Zone 1	10, 330, 699	3, 650, 227	6, 680, 472	2, 501, 431	5, 538, 563	1, 044, 284	924, 874	104, 512	217, 035
Zone 2	2, 083, 182	809, 406	1, 273, 776	452, 817	960, 135	337, 670	276, 017	18, 919	37, 624
Zone 3	2, 243, 258	1, 044, 183	1, 199, 075	487, 897	814, 583	535, 901	352, 572	20, 385	31, 920
Total	14, 657, 139	5, 503, 816	9, 153, 323	3, 442, 145	7, 313, 281	1, 917, 855	1, 553, 463	143, 816	286, 579
Nonjurisdictional sales:									
Zone 1	5, 485, 336	1, 091, 641	4, 393, 695	762, 885	3, 651, 335	296, 882	599, 278	31, 874	143, 082
Zone 2	1, 991, 904	523, 460	1, 468, 444	286, 756	1, 094, 351	224, 723	331, 210	11, 981	42, 883
Total	7, 477, 240	1, 615, 101	5, 862, 139	1, 049, 641	4, 745, 686	521, 605	930, 488	43, 855	185, 965
Total system costs	22, 134, 379	7, 118, 917	15, 015, 462	4, 491, 786	12, 058, 967	2, 439, 460	2, 483, 951	187, 671	472, 544

	Mcf-miles		Percent		Average of 3-day peak	Average annual volume	Percent	
	Demand	Commodity	Demand	Commodity			Demand	Commodity
Jurisdictional Sales:								
Zone 1	18, 301, 001	11, 036, 321	42. 808	37. 234	123, 044	71, 714	55. 689	45. 929
Zone 2	5, 917, 641	3, 293, 716	13. 842	11. 112	22, 273	12, 432	10. 081	7. 962
Zone 3	9, 391, 785	4, 207, 122	21. 968	14. 194	24, 000	10, 548	10. 862	6. 755
Total	33, 610, 427	18, 537, 159	78. 618	62. 540	169, 317	94, 694	76. 632	60. 646
Nonjurisdictional sales:								
Zone 1	5, 202, 761	7, 151, 058	12. 170	24. 126	37, 525	47, 279	16. 984	30. 279
Zone 2	3, 938, 277	3, 952, 312	9. 212	13. 334	14, 105	14, 169	6. 384	9. 075
Total	9, 141, 038	11, 103, 370	21. 382	37. 460	51, 630	61, 448	23. 368	39. 354
Total system sales	42, 751, 465	29, 640, 529	100. 000	100. 000	220, 947	156, 142	100. 000	100. 000

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[1] Includes A. & G. expense, customer accounting expense, and sales expense.

APPENDIX C

EAST TENNESSEE NATURAL GAS CO.

[Docket No. RP65-4]

Rate schedule	Rates		Revenue		
	Demand	Commodity	Demand	Commodity	Total
		Cents			
G-1 and CR-1	$3.25	25.74	$1,873,017	$2,769,422	$4,642,439
G-2 and CR-2	3.50	28.24			
G-1 development		80.0		78,845	78,845
CR-3 and CPR-3	3.75	30.74	857,295	1,183,662	2,040,957
SG-1		49.93		2,817,783	2,817,783
SG-2		54.13		1,251,414	1,251,414
I-1		No change		3,054,577	3,054,577
I-2		do		770,208	770,208
Total jurisdictional revenue			2,730,312	11,925,911	14,656,223
Total cost					14,657,139

APPENDIX C

EAST TENNESSEE NATURAL GAS CO.

[Docket No. RP65-4]

Rate schedule	Annual volume	2:1 factor	Reduction in rate	Commodity rate
Jurisdictional:				
Firm:			*Cents*	*Cents*
G-1	10,759,216	21,518,432	2.88	25.74
G-1 development	98,556			
SG-1	5,643,466	5,643,466	1.44	49.93
SG-2	2,311,868	2,311,868	1.44	54.13
CR-3, CPR-3	3,850,558	7,701,116	2.88	30.74
Total firm	22,663,664	37,174,882		
Total reduction in cost:				
Revenue at present rates, 3d-year volume		$15,191,541		
Opinion costs		14,657,139		
Total reduction required		534,402		
Unit reduction, cents		1.4375		

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON COMPLAINT UNDER SECTION 5(a) AGAINST THE RATES CURRENTLY CHARGED BY RESPONDENT

(Issued August 23, 1965)

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Wenner, ***Presiding Examiner:*** **This is a rate proceeding concerning prospective rates for East Tennessee Natural Gas Company (ET), a natural gas pipeline serving Tennessee and southwestern Virginia. It was initiated by a complaint under Section 5 of the Natural Gas Act brought by the Knoxville**

Utilities Board and twenty-five cities and distributor gas companies in Tennessee alleging that ET's rates are unreasonably high. These complainants are listed in Appendix A, and will be referred to hereinafter as Knoxville. Chattanooga Gas Company (Chattanooga) of Tennessee, and Roanoke Gas Company (Roanoke), and Colonial Natural Gas Company (Colonial), Virginia gas distributors purchasing gas from ET's Virginia extension, were permitted to intervene. Roanoke and Colonial jointly are sometimes referred to below as the Virginia extension.

The primary questions for decision are whether the rates of ET are unjust or unreasonable, and if so, what rates should the Commission determine in lieu thereof.

I

TEST YEAR: SELECTION AND INCLUSION OF VIRGINIA EXTENSION

In determining the reasonableness of prospective rates the Commission generally selects a recent period as a test year, and then makes adjustments for certain types of expected changes. *United Gas Pipe Line Company*, Opinion No. 428, 31 FPC 1180 at pp. 1185, 1186 (1964).[1]

Three questions arise in connection with the test year: (1) the test year to be used; (2) whether the results of the Virginia extension should be excluded from or "rolled-in" with ET's cost of service; and (3) if the Virginia extension is included, should the test year for ET be adjusted to reflect the first year of actual operations on the Virginia extension, the second, or the third?

1. *The test year.*

The twelve months ending September 30, 1964, is the most recent period for which data was available at the hearing and this is selected as the test year. There is no serious dispute about the selection of the test year.

2. *Excluding or "rolling-in" the Virginia extension.*

The Virginia extension was certificated in *East Tennessee Natural Gas Company*, Docket No. CP64-21, Opinion No. 435, July 17, 1964, 32 FPC 158. It was built between October and December, 1964, after the test year. The second issue regarding the test year is whether ET's cost of service should be adjusted to reflect these added facilities.

The Virginia extension is simply one more addition into an adjacent area of a system that has been growing steadily since 1948. In Appendix B are listed some twelve of the principal grants to ET between 1948 and 1964. The Virginia extension is physically connected and operationally unified with ET's system. In these circumstances, it is proper that for ratemaking purposes ET be treated as a single entity.

> Since the system of East Tennessee is integrated and unified, and operated as such, the Examiner correctly concluded that the only proper and feasible method of allocating costs in this instance is on a system-wide basis. *East Tennessee Natural Gas Company*, 13 FPC 549, 562 (1954).

Treating an integrated pipeline as an entity has been the typical method in ratemaking, *Tennessee Gas Transmission Company*, 27 FPC 202, 206, 208, 209 (1962).

Two cases are distinguishable. In *United Gas Pipe Line Company*, Opinion No. 428, May 14, 1964, *supra* * * * and Opinion Nos. 428-A and B, 32 FPC 687, 879, the Commission stated that while it

> * * * has, historically, favored rolled-in methods of allocation * * * United, however, has traditionally been regarded as an exception to this principle,

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[1] The Commission formerly referred to "adjustments for known changes occurring within a reasonable time." *United Gas Pipe Line Company, supra*, at p. 1186.

> mainly because it has, in the past, operated as two essentially separate jurisdictional systems * * * p. 1195.

However, even in this case the Commission noted that:

> This is in the process of change; and we expect that future allocations of United's costs will trend in the direction of a complete roll-in. p. 1197.

In *Trunkline Gas Co.*, 21 FPC 704, 711, aff'd as *Battle Creek Gas Co.* v. *F.P.C.*, 281 F. 2d 42 (CADC–1960), the Commission affirmed the general principle of "rolled-in" cost of service and applied it to the existing system, but permitted an exception for an extension built to serve a single customer. The *Northeastern case*, 9 FPC 271 (1950) and the *Algonquin* case, 12 FPC 209 (1963), are also distinguishable: they were certificate cases, and they did not involve extensions of existing systems but sales to separate subsidiary companies, which results in significant operating and tariff differences.

Knoxville argues that the revenues from the Virginia extension are insufficient to cover the cost (including return) of providing service in Virginia for the next few years, even on an incremental cost basis; therefore, says Knoxville, the Virginia extension with its costs and revenues should be excluded in determining whether ET's test year revenues yield an excess over its cost of service; and correspondingly, the issue of ET's excess revenues should be determined by considering the Tennessee portion of ET as a segregated unit with its own cost of service and revenues. For to treat ET as a single system by "rolling-in" the Virginia extension costs and revenues with the Tennessee system would throw the burden of the Virginia deficiency upon the Tennessee customers; and deprive them of rate reductions which they would receive if the Tennessee portion of ET were considered as a separate entity.

The certificate case, Docket No. CP64–21, was the forum for determining whether the Virginia extension should be certificated. In that proceeding Knoxville expressed its fears about the possible unprofitability and resulting burdens on the existing Tennessee customers if this extension were certificated. But the Commission certificated the extension, and the situation is now governed by normal ratemaking principles. On this score, Knoxville's argument that the Virginia extension is going to be unprofitable for a while, and should therefore be excluded from ET's test year cost of service constitutes in some respects a relitigation of what is *res judicata* in Docket No. CP64–21. The Commission having heard the argument decided that case. And ET is now a pipeline that operates in Tennessee and Virginia and must be treated as such.

The conditions in the ordering clause in Docket No. CP64–21 do not provide that the Virginia extension should be excluded from ET's cost of service. Clauses B ii and vi provide:

a. ET is to keep data to show the costs and revenues for the Virginia extension for five years;

b. This is without prejudice to the method to be used in any future proceeding "for allocating costs of [for] determining rates;" and

c. The results of ET's operation in the Virginia zone during the first year may not be used as a basis for a rate *increase* under Section 4(e).

The last two provisions are neutral regarding a proposed rate *decrease* under Section 5, or a method for costing the Virginia extension. The first limitation, the requirement of keeping separate records for the Virginia extension, suggests that the Commission wanted to maintain some surveillance in the event that the Virginia extension should become an undue burden on the Tennessee portion of the system. The accomplishment of this objective does not require that the Virginia extension be excluded from the pipeline's cost of service for purposes of setting rates in this proceeding. The principle of including all its segments into an integrated pipeline's cost of service can, where proper, be harmonized with the principle of avoidance of an undue burden on other parts of the system by adjustments to the test year to reflect a representative future year for the new segment, or by appropriate rate design. Had the Commission desired to provide against the inclusion of the Virginia extension in future rate cases, it could easily have done so by express language in Docket No. CP64–21. Indeed one would expect that if it had desired a result so contrary to established ratemaking principles, it would have said this plainly. Nor is such an intention to be derived by construction of the conditions relating to the Virginia extension. It is therefore concluded that the test year should not exclude the Virginia extension from ET's cost of service.

3. *What year of operations should be used for adjusting the test year?*

In the Virginia certificate case the economic feasibility of the extension was based on the hypothesis that it would earn a fair return by the third year of operation. During the first two years the revenues were not expected to cover the cost of service including full return and associated income taxes for the Virginia extension even on an incremental cost basis.

The Virginia extension was built to serve two distributors, Roanoke and Colonial. In Docket No. CP64–21, it was expected that Colonial would purchase about twice as much the annual volume of gas that Roanoke would. Roanoke began taking gas on December 18, 1964. However, Colonial's start was delayed until May 1965. ET and Colonial renegotiated their precedent agreement so as to postpone by one year Colonial's contract demand charge from December 1964 to December 1965.

By December 1965, Roanoke will have been in operation a full year, and Colonial about a half year. It is reasonable to expect that a decision by the Commission in this case (and on a petition for reconsideration) will not issue until late in 1965, about the end of the first year of actual operation.

In the instant proceeding ET submitted sales and revenue estimates for operations on the Virginia extension, and these were accepted by all parties. ET adhered to its original estimates submitted in the certificate case except that it estimated that the Colonial revenues would lag a year behind the original estimates. ET's estimates for the annual sales from the Virginia extension are:

Year of operation of Virginia Extension:	
1	$850,000
2	1,651,000
3	2,152,000
4	2,474,000

These estimates are based in considerable part on the provisions in the service agreements between ET and Roanoke and ET and Colonial, under which the two distributors are obligated to make payments to ET for gas on a fixed incremented demand schedule over the first three years of their respective operations (and in the case of Roanoke an obligation to pay for increasing annual volumes purchased). Thus the Virginia customers have to pay a considerable part of the projected revenues whether their sales to retail customers materialize on schedule or not, mitigating the impact of any inaccuracy in the sales estimates.

In the *United* case, *supra*, the Commission explained the purpose of adjusting the test year for future events.

> The objective is to present adjustments to the test year figures which will match additional expenses with additional income as close as is reasonably possible, p. 1186.

Under the "rolled-in" adjustment substantially all the cost of facilities for the Virginia extension, some $7,000,000 is included in the cost of service for the first year. But the sales and the revenues derived therefrom are expected to escalate regularly for the first several years. A test year revenue adjustment for the Virginia extension to match the test year cost of service is therefore appropriate: but which year's revenues are representative?

ET argues that the revenue adjustment should be on the basis of the expected sales during the first year's actual operation, estimated first year for Roanoke and (because of the delay) half of the estimated first year for Colonial. This isn't representative of the future because by the time the Commission's final decision issues, the first year's actual operations will have been virtually completed and ET will be operating in the second year, when its sales from the Virginia extension will have virtually doubled.

Staff proposes to use the sales (with appropriate adjustments in costs) for the second year of operations, *i.e.*, second year sales for Roanoke and first full year sales for Colonial. These are appropriate levels for the second year. But a year later the Virginia sales will have increased and will be producing excess revenues. For this reason Knoxville and Chattanooga urge that if the costs of the Virginia extension are to be rolled-in, the sales level for the third year of operations should be the minimum adjustment. In the fourth year of operations Colonial's purchases will again increase because this will be only the third year of the Colonial operation. Thus use of third year sales would produce excess revenues in the fourth year and each year thereafter, without giving consideration to any further growth.

On the other hand, if rates are based on third year sales, ET will have to bear a deficiency of some $80,000[2] during the second year, a result which would tend to contravene the Commission's policy of encouraging pipelines to extend their service to new areas, "provided that no undue burden is placed on the existing customers." *Southern Natural Gas Company*, Opinion No. 424, April 6, 1964, 31 FPC 789 at 796, cited in Opinion No. 435, 32 FPC 158 at 161. While the third year standard is more representative of the long term future than the second, its immediate adoption would impose a burden on ET; and the second year standard would yield excess revenues after being in effect only one year, imposing an undue burden on the rate payers.

In these circumstances the fairest solution is to use the sales estimate for the second year of the Virginia operation for determining rates for the year immediately following the decision herein, and then to use the third year sales level for setting rates for the years thereafter. As the Commission stated in this connection in the *United* case, *supra*, "What is reasonable obviously depends on the circumstances."

As a practical way of effectuating this two-step test period standard, the rates to be prescribed herein will be fixed in the first instance on the basis of the second year of operation of the Virginia extension; and on and after December 18, 1966, ET's rates will be determined on the basis of the third year of operation of the Virginia extension.

Knoxville argues that ET will have been earning excess revenues under present rates until the present rates are revised and this will compensate for any deficiency in the year following the prescription of rates herein; and that as a result any burden arising from using third year sales during the second year will have already been offset. But it is settled law that excess earnings under a prior closed rate cannot be used to offset a deficiency under a prospective rate. *Galveston Electric Company* v. *City of Galveston*, 258 U.S. 388 (1922).

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[2] This deficiency would reduce the allowed rate of return from 6.5 percent to 6.1 percent during the second year of operation of the Virginia extension.

In *United Gas Pipe Line Company, supra*, and in *Southern Natural Gas Company*, 29 FPC 323, 433 and 779 (1963), the pipelines had placed substantial new facilities in operation some nine months after the close of the test period. The Commission adjusted test year costs to include the added facilities, and adjusted revenues to include the first year's revenues.

In *Midwestern Gas Transmission Company* v. *Federal Power Commission*, 292 F. 2d 119, (CA5–1961), the Court sustained the Commission's requirement that Midwestern's rates be established on the basis of its third year of operation. The Commission had imposed a rate condition in a certificate. The case involved the problem whether the rate level arising under the rates submitted by the pipeline several years later was in consonance with the original rate condition. The Commission applied rate case principles to decide the matter in *Midwestern Gas Transmission Company*, 24 FPC 844, 846 (1960), and the Court on review considered the problem to be one for "rate fixing purposes." In affirming the Commission's decision the Court stated:

> During the first two years it was expected that considerably less gas would be purchased, transmitted and sold by Midwestern than during the third and succeeding years. It did not expect and was not entitled to expect that it would be permitted, during the development period, to charge rates that would produce revenue of an amount equal, or even comparable, to that which it would be entitled to receive when the full capacity of operations had been attained. Midwestern is not entitled to the return for the lesser volume of business during the development years that it will become entitled to receive during the post-development period from the larger volume.
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> * * * * * * *
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> The third year of operation was a proper year upon which to base a rate of return for rate-fixing purposes. It would be the first full year of normal operations. The use of an earlier year as a test year would have produced a rate which would have resulted in an excessive cost to the consumer * * * (120, 121).

Although there are problems in making forecasts for several years, large businesses prepare and use them. The Commission requires three-year forecasts for the operations of proposed new facilities in certificate cases. When lending institutions consider substantial long-term loans, they often obtain from the borrower forecasts of costs and revenues for several years. In connection with borrowings by Tennessee Gas Transmission Company (TGT), ET's parent, a TGT official who appeared in the instant proceeding as an ET witness, prepared cost and revenue forecasts some of which involved projections for as far as five years in the future. The economic feasibility of the Virginia extension in the certificate case was based on the revenue results of the third year of operation. It is reasonable that the prospective permanent rate level in this case be based on third year results where these are reasonably expected to be considerably higher than the earlier years, provided an undue burden is not imposed on the pipeline during the build-up period, which is accomplished by an interim rate based on second year operations.

II

TEST YEAR: OTHER ADJUSTMENTS

1. *Weather Normalization.*

In its decisions the Commission has consistently rejected claims that test year revenues should be adjusted downward because of abnormally low temperatures during the test year.[3] ET argues that such an adjustment should be made in this case. Staff, Knoxville and Chattanooga oppose.

Among the reasons for not making a test year adjustment for temperature is the difficulty of determining an appropriate adjustment. For example:

a. Factors other than temperature should also be considered in an adjustment for weather: for example, wind velocity and cloud cover directly affect heat consumption. The measurement of these factors is a practicable impossibility.

b. The measurement of a representative temperature adjustment followed through to its effect on gas volumes requires relating representative temperatures to representative heating load centers. Also normalization for cold weather involves a determination not only of the proper decrease in firm sales but also of the proper increase in interruptible sales. These can be complex problems.

c. An adjustment for cold weather would require corresponding adjustments in many cases for warmer than average weather. The complications and proof which this would require are considerable.

Some of these problems are indicated by the evidence presented in this case. ET's temperature results are for Knoxville, which it is asserted is a representative center for the system. But the temperature statistics from other points indicate that Knoxville's temperatures are not representative. Hence it would be necessary to correlate temperature fluctuations with sales volumes at the heating load centers, which ET has not done. In this and in other respects the claims for and the measurement of a weather adjustment "have not been sufficiently supported to justify the adjustments claimed." *Alabama-Tennessee Natural Gas Co., supra,* at 1187.

2. *Sales to Farmer's Chemical.*

Chattanooga currently sells interruptible gas purchased from ET to the Farmer's Chemical Association for manufacturing fertilizer. In Docket No. CP64–270, proposals have been made for Chattanooga to purchase firm gas for this purpose from other pipelines. However, since ET has an exclusive contract to supply gas to Chattanooga, another proceeding has been instituted, *Chattanooga Gas Company,* Docket No. RP65–3, 32 FPC 882, to determine whether Chattanooga can legally purchase gas from another supplier. In Docket No. CP64–270, ET is proposing to increase its capacity in order to increase sales to Farmer's Chemical.[4] The alternative proposals are numerous and their consequences varied. The outcome of the two proceedings and the nature and effects that the decisions therein may have on these sales are still conjectural.[5] Consequently at this stage it would be unsound to provide an adjustment for the loss of these sales; for if this were done, present customers would be paying rates on the basis that ET is not making such sales even though it is and may well continue to do so.

3. *Savings from Automatic Equipment.*

ET automated the compressor stations on the Virginia extension at a cost of $200,000 which it estimates will save $60,000 on annual labor costs. It included the investment in its accounts but made no reduction in estimated operating expenses. An approximate adjustment in operating expenses should be made.

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[3] In two cases the Commission has indicated that weather normalization might be proper in prescribing future rates if abnormal weather during the test year were proved. *Home Gas Company,* 13 FPC 241, 245 (1954); *Alabama-Tennessee Natural Gas Company,* 27 FPC 1180, 1186, 1187 (1962).

[4] The record herein shows that proposals to reduce ET's rates for these sales were stricken in Docket No. CP64–270.

[5] Exceptions to the decision of the Presiding Examiner in RP65–3, modifying the contract in some respects, were filed on May 20, 1956. Briefs to the Presiding Examiner in CP64–270 were filed June 17, 1965.

4. *Regulatory Expenses.*

To determine the allowance for rate case expenses the Staff used the average of ET's regulatory expense for certificate as well as rate cases over the most recent five years then available, 1959–1963, $29,000 per year. If the 1964 figure is included the 6-year average is $25,000.

ET estimates its rate case expense for this case and for Docket No. RP65-3 to be $152,400, which it amortizes over three years for an average of $50,800.

ET had one rate case in 1959; it has two in progress now and had none during the interval. Two rate cases in one year are unusual for East Tennessee, so these expenses should not be treated as recurrent; for the amount allowed for regulatory expenses becomes imbedded in the rate and continues to be a charge in the indefinite future until a new rate is finally determined. In the instant case ET's witnesses and its attorney were company employees of either ET or its parent, TGT. The amounts estimated are largely allocations of their annual salaries. Moreover RP65-3 did not require elaborate preparation as the problem involved is primarily legal. The Commission has frequently used an amortization period of five years for regulatory expense. *Alabama-Tennessee Natural Gas Company*, 11 FPC 75, 82 (1952). In *Alabama-Tennessee*, 27 FPC 1180 (1962), the Commission amortized the amounts over eight years. In *Michigan Wisconsin Pipe Line Company*, 13 FPC 326, 357 (1954), the Commission deviated from its usual practice of five-year amortization of rate case expense because of special circumstances including the filing of one rate case immediately after another, and in effect used a 3-year amortization period. In *Midwestern Gas Transmission Company*, Opinion No. 444, December 30, 1964, 32 FPC 993, 1548, the Commission approved a settlement with a 3-year amortization period. But the order approving the settlement states that the settlement shall not constitute an agreement on ratemaking principles or methods, but that it is only a dollar settlement of Midwestern's rate proceedings. In the circumstances of this case it is concluded that the amount claimed by East Tennessee should be accepted and amortized over a 5-year period with the sum rounded to $30,000 per year. If future rate proceedings occur before the cost of the instant proceedings has been fully amortized an apropriate adjustment can be made in a subsequent proceeding. *Cf. Alabama-Tennessee Natural Gas Company, supra*, at p. 82.

5. *Working Capital and Inclusion of Special Deposits and Minimum Bank Balances.*

ET includes in its working capital allowance special deposits amounting to $25,000. The Staff allowance for working capital is based on the Commission's pipeline formula, ⅛ annual operating expenses less the cost of purchased gas, plus materials and supplies and prepayments. The Commission has never included such special deposits in working capital. Although these items were challenged, ET introduced no evidence to show that these are required at all, or whether they are for more than a temporary period.

ET included in its working capital minimum bank balances of $400,000. ET has not shown that the normal bank balances it maintains in the ordinary course of its business are insufficient to cover the service expenses of the banks, or that the maintenance of such balances results in savings in interest rates at least equal to the return ET would earn if these deposits were included in its rate base. The bank balances arising out of the ordinary business of a company like ET are attractive to banks. There is no evidence that ET ever sought better arrangements with competitive banks. Moreover, ET has available to it substantial cash accruals of *ad valorem* taxes paid in advance for which no offset has been made by the Staff. In these circumstances the Commission has disallowed claims for minimum bank balances, *Michigan Wisconsin Pipe Line Company*, 13 FPC 326, 364 (1954), and ET's claims therefor are rejected.

6. *Atlantic-Seaboard vs. Relative Use Methods of Allocation To Determine Jurisdictional Costs.*

For many years the Commission has used the Atlantic-Seaboard formula to allocate costs between jurisdictional and non-jurisdictional operations. In the instant case the Staff presented its exhibits to show its results on the basis of the Seaboard method and also a new method called the Relative Use method. The other parties have used the Seaboard method, except that on brief Knoxville suggested averaging the results of the Seaboard and the Relative Use methods. The excess earnings are some $500,000 greater under the Relative Use method than under Seaboard.

Staff explains that the primary purpose of the Relative Use method is "an allocation method which gives a more precise measure of the use of the pipeline system by the various classes of customers than that afforded by the Atlantic-Seaboard method." Under Seaboard fixed costs are allocated on the basis of fifty percent in the ratio of gas delivered to various classes of customers on the three-day coincident peak, and fifty percent on the basis of annual sales. Under the Relative Use method fixed costs are allocated on the basis of the average of three factors: the above two, coincidental peak and annual sales, plus a new factor, the non-coincidental peak day, the ratio of use by each class of customer on its respective maximum use day. Staff states that this new factor "measures the relative maximum use of the facilities" by each class of customer and that "plant and operating costs of joint facilities used by various classes of customers should be allocated in proportion to the facilities which would be necessary to supply each class of customer." Staff offered no further elaboration. Staff is apparently arguing that the Relative Use method gives a better measure of the use of the pipeline by the various classes of customers than does Seaboard. Staff does not show in what way the addition of the factor of maximum use on the respective non-coincident peak days provides a better measure, or what is the economic significance of the non-coincident peak day.[6]

No party suggests that the Seaboard method is not satisfactory for purposes of this case. On brief Staff recommends the Relative Use method as a "possible alternative" to the Seaboard method. The evidence and argument presented are insufficient to justify the replacement of the Atlantic-Seaboard method by the Relative Use method in this proceeding.

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[6] There are several unexplained features in the Staff's application of the Relative Use method including:

(1) Removal from the coincidental peak day sales of the interruptible purchases from TGT. No explanation is offered for making this apparent judgment modification in the Relative Use method and not in the Atlantic-Seaboard method.

(2) Reduction of the non-coincidental peak day purchases of interruptible customers by a factor determined by deducting the coincidental peak day sales from the non-coincidental peak day sales, and then dividing the remainder by the coincidental peak day sales. The use of this factor as a measure of interruptibility in service is not explained.

III

TEST YEAR: LIBERALIZED DEPRECIATION

In *Alabama-Tennessee Natural Gas Company*, 31 FPC 208 (1964), the Commission reached the following conclusions regarding the federal income tax consequences arising from the use by a pipeline of liberalized depreciation instead of straight-line depreciation.

1. Use of liberalized depreciation results in a permanent reduction of federal income taxes by pipelines which maintain either a growing or a stable plant.
2. Alabama-Tennessee, in particular, and the gas pipeline industry, in general, will maintain a growing or stable plant in the foreseeable future.
3. The prime purpose of permitting liberalized depreciation is to promote expansion in the capital goods industry. This result will best be subserved if the tax savings are reflected in lower rates, which will tend to generate higher sales, in turn requiring more capital facilities for gas transmission.
4. Therefore, where the pipeline is using liberalized depreciation and its plant is likely to be either growing or stable, its cost of service and rates should reflect the tax savings resulting from the use of liberalized depreciation. In other words, in these circumstances it must pass through the tax savings from liberalized depreciation to its customers.[7]

The Commission agreed to a stay issued by the Court of Appeals for the Fifth Circuit on condition that Alabama-Tennessee resume and continue the use of liberalized depreciation for federal income tax purposes and continue the use of the Commission prescribed tax accounts. In *Natural Gas Pipeline Company of America*, Opinion No. 456, March 18, 1965, 33 FPC 574, the Commission followed the *Alabama-Tennessee* decision.

In *United Gas Pipe Line Company*, Opinion No. 428, May 14, 1964, and *Wisconsin Michigan Power Company*, Opinion No. 432, June 9, 1964, 31 FPC 1445, the respondents had always used straight-line depreciation in filing their tax returns. In these circumstances the Commission permitted their cost of service and rates to be determined on that basis.

The Commission's decisions on this subject may be summarized thus: Where a pipeline is using liberalized depreciation the Commission requires that it lower its current rates to the extent that its current taxes are lowered as a result of its use of liberalized depreciation, provided the facts show that the use of liberalized depreciation probably will result in tax savings. Where a pipeline has never used liberalized depreciation its cost of service may be based upon the straight-line depreciation it is actually using.

ET had been using liberalized depreciation since the beginning of 1954. In December 1964, after the institution of this proceeding, ET's board of directors decided to switch to straight-line depreciation and to use this for its next federal income tax return, which is to be filed by September 15, 1965. Until then ET is free to file under liberalized depreciation. But if it then files on the basis of straight-line depreciation, thereafter it will not be able to change back to liberalized depreciation unless the Commissioner of Internal Revenue consents. ET's parent, TGT, continues to use liberalized depreciation wherever it is available. However, Midwestern, another subsidiary, has indicated an intention to switch to straight-line depreciation for tax purposes and this matter is being heard in *Midwestern Gas Transmission Company*, Docket No. RP61–19.

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[7] The Commission further ruled that no return should be allowed on the accumulated reserves for deferred taxes arising from the past use of liberalized depreciation. The pipeline is permitted to continue to have the use of this capital interest free.

The issue in this case is new: do the facts of this case warrant the Commission's basing its tax allowance in the cost of service on liberalized depreciation where ET says it is switching from liberalized to straight-line depreciation for the reasons advanced?

Several factors bear on this issue:

1. *Future growth in plant facilities.* The annual additions to ET's gas plant facilities are shown in the table below:

Year	Annual additions to gas plant	Annual retirements to gas plant	Net annual additions to gas plant
1954	$5,417,104	$48,535	$5,368,569
1955	107,917	16,036	91,881
1956	292,188	39,478	252,710
1957	471,147	57,831	413,316
1958	174,023	8,026	165,997
1959	609,311	32,776	576,535
1960	450,011	67,923	382,088
1961	1,174,024	61,409	1,112,615
1962	388,286	48,402	339,884
1963	1,231,317	141,633	1,089,684
1964	6,668,182	50,335	6,617,847

Source: (1954-62, inclusive) FPC, Statistics of Natural Gas Companies; (1963-64) Annual Report (FPC Form No. 2) filed with the Commission by ET.

It is evident that over the years ET's facilities have been increasing.

The Tennessee and Virginia areas are growing at about the national average. For example, during the ten years 1954–63 personal income in the Tennessee area grew 62 percent and in the Virginia area 70 percent compared to a national average growth of 61 percent.[8] ET's growth should accompany that of the area. ET states "that the requirements of its existing customers increases an average of about 5 percent a year, so that there would be an increase, just normal growth of existing customers." While such increases in sales are not necessarily translated year by year into increased construction of facilities, in the long run they will tend to lead to increases in capacity because "as the customer requirements increase we will naturally have to beef up the system and increase the capacity." ET has pending an application in Docket No. CP65–66 for expansion which involves a substantial increase in facilities in the Tennessee area. Also it has now expanded into the Virginia area offering it new opportunities for further expansion.

Under the investment tax credit provisions ET can subtract seven percent of the cost of certain new property from its federal income taxes. This is a stimulus for ET to expand its facilities.

For these reasons it is reasonable to expect that ET will maintain a growing plant over the foreseeable future.[9]

2. *Need for increased sales and advantages of lower rates.* The success of the Virginia extension depends on an increase in sales. Yet ET's present rates to Roanoke are higher than those of Atlantic Seaboard Corporation, which also supplies Roanoke. ET was certificated into this competitive situation at its own request; higher rates will lessen its competitive ability. Also, ET's Tennessee zones are subject to competition by TVA; and in Docket No. CP64–270 Transcontinental Gas Pipe Line Corporation and Southern Natural Gas Company

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[8] *Survey of Current Business*, August 1964, 1962, 1959. Personal Income By Major Source. Since Northern Virginia is growing faster than the rest of the state, it may be that the Roanoke and Bristol areas are growing less rapidly.

[9] No consideration has been given to the question whether in determining growth, ET should be considered as part of a consolidated group with its parent TGT.

seek to compete in ET's area. Lower rates will help ET develop its market and also meet competition in both the Virginia and Tennessee areas it serves.

3. *Lower rates with no loss in net income.* If ET uses liberalized depreciation it can reduce its cost of service and its rates by some $300,000 for the second year of operation for the Virginia extension, and some $450,000 for the third year of operation, while receiving the same net income as if it had used straight-line depreciation. (Appendix D).

4. *Rate stability.* ET advances two primary reasons for giving up liberalized depreciation: (a) "The rate treatment to be accorded pipeline companies by the Federal Power Commission who are utilizing liberalized depreciation is in a state of uncertainty because of appeals pending in the courts with respect to the Federal Power Commission's decisions in Opinion Nos. 417 and 417-A"; and (b) "East Tennessee is desirous of bringing about rate stability for the future."

The *Alabama-Tennessee* case has been argued in the Fifth Circuit and a decision is awaited. There is always the question whether the Commission's decision will be sustained on judicial review; this is true of every Commission decision of general import which is appealed. But ET offers no convincing reasons why the uncertainty in this instance has such adverse effects that it should abandon the advantages of liberalized depreciation.[10]

Under the decision in *Alabama-Tennessee* providing for flow-through to the customer of the benefits of liberalized depreciation and with abandonment of the tax deferrals ("normalization"), depreciation expense will tend to vary to some extent merely with the passage of time, which would not occur under straight-line depreciation.[11] This variance could result in some changes in taxes and in rates over time. However, for a company with the characteristics and size of ET, the difference in depreciation is not likely to be substantial in relation to the total cost of service, not more than a few percent. Also, the total cost of service is likely to be affected by many other factors over time. ET has a deferred tax reserve of $239,000 which it has collected from its customers in the past for the express purpose of offsetting higher taxes arising from the use of liberalized depreciation. ET is thus in a different position from a pipeline which has never used liberalized depreciation.[12]

The factor of rate stability primarily concerns the distributor customers. ET's customers participating in the hearing, Knoxville and the twenty-five companies associated with it, Chattanooga, and the Virginia extension, all want the rate savings arising from the continued use of liberalized depreciation even at the risk of some potential instability in rates.

5. *Managerial discretion.* ET on brief argues that the tax law gives it the option of computing its taxes either on the basis of straight-line depreciation or liberalized depreciation, and that to fix its rates on the basis of liberalized depreciation if it doesn't use this method "constitutes substitution of regulatory authority for managerial judgment and deprives the company of rights specifically granted it by the tax laws."

Whatever decision is made here, ET is free to choose its own method for filing its federal income taxes. The issue in this case is whether ET should be permitted to make its customers pay for what may be an unreasonable decision by its management. The issue in this case is whether ET, having just been authorized under the Natural Gas Act to expand into an area requiring rapid development if the results are to be economic, and whose distributors in other areas face competition—whether such a pipeline is fulfilling its duty under the Natural Gas Act to charge reasonable rates when it voluntarily takes an action that will substantially raise its costs and rates—for the reasons it has presented in this proceeding. There is an area of managerial discretion in pipeline management, but it is not a license to collect and spend the customer's money unreasonably. For here ET is insisting that its consumers bear the burden of its asserted managerial decision.

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[10] In view of ET's expressed worry about uncertainty, it is surprising that it does not await the outcome of the Commission's decision on this subject before abandoning liberalized depreciation.

[11] While there will be a variance, under liberalized depreciation the variance is predictable in a particular situation.

[12] Where a pipeline has never used liberalized depreciation, it is arguable that requiring it to do so may involve policing problems. Since ET's accounts have been set up for liberalized depreciation the problem is diminished.

These statements by the Supreme Court and the Fifth Circuit are apposite:

> The contention is that the amount to be expended for these purposes is purely a question of managerial judgment. But this overlooks the consideration that the charge is for a public service, and regulation cannot be frustrated by a requirement that the rate be made to compensate extravagant or unnecessary costs for these or any purposes. *Acker* v. *United States*, 298 U.S. 426, 430 (1936).
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> It is the obligation of all regulated public utilities to operate with all reasonable economies. This applies to tax savings as well as economies of management. *El Paso Natural Gas Co.* v. *Federal Power Commission*, 281 F. 2d 567, 573 (1960) cert. den. 366 U.S. 912.

The adoption of liberalized depreciation by a pipeline involves an evaluation of many factors. Perhaps because of this the Commission decided not to compel a pipeline to institute liberalized depreciation. In the present case, however, ET's management, after evaluating all the factors involved, decided that liberalized depreciation was desirable. Of the reasons given by ET for its proposed change from its original decision, the first, uncertainty because of pending court appeals, will be resolved in due course. The second, instability in rates is conjectural and not deemed substantial by those for whose benefit it is advanced—the distributor customers. ET has not shown that continued use of liberalized depreciation will adversely affect, it, its customers, or the public interest. Abandoning its established method will substantially raise its cost of service, raise its rates, adversely affect its customers'—and ET's—ability to develop the market, without apparent or demonstrated offsetting benefits. In these circumstances ET's proposal is improvident and unreasonable. The ambit of managerial discretion is exceeded by a proposal which will raise costs by some $300,000 and $450,000 for the insufficient reasons adduced at hearing and in brief. Accordingly, it is concluded that ET's test period cost of service should be based on liberalized depreciation, however ET chooses to file its federal income taxes.

IV

RATE OF RETURN

The proposals for rate of return range from 5.75 percent advocated by Knoxville, to 6.5 percent by staff and 7.25 percent width by ET.

Midwestern Gas Transmission Company, Opinion No. 444, decided October 13, 1964, 32 FPC 993, is almost an exact precedent. There the Commission allowed a return of 6.5 percent, which is the highest it has allowed for any substantial pipeline in a formal proceeding

ET is a subsidiary of Tennessee Gas Transmission Company (TGT) which owns some 89 percent of its stock just as it owns 90 percent of Midwestern's stock. The parent TGT controls ET, just as it controls Midwestern. TGT's officials determine policy for ET: for example, TGT's assistant comptroller supervises ET's accounting, and TGT's rate department is responsible for ET's rate matters. Four of ET's five witnesses were TGT officials.

ET's common stock is 35 percent of its capitalization and its debt 65 percent. In the *Midwestern* case the Commission found that a 6.5 percent over-all return (yielding a 9.26 percent return on Midwestern's equity) was "adequate to meet MGT's needs in attracting capital and preserving its financial integrity." (*supra*, p. 1000, 1001). A 6.5 percent over-all return on ET's capitalization would yield an 8.53 percent return on its equity.

Three factors affect ET's financial position more favorably than Midwestern's:

a. ET has a thicker equity, 35 percent compared to Midwestern's 20 percent, reducing the company's risk.

b. ET is an established company whereas Midwestern was a new company.

c. ET's non-jurisdictional gas business is more profitable than its jurisdictional business and is growing; Midwestern had no such non-jurisdictional business.

ET's non-jurisdictional business comes from its sales of interruptible gas to industrial concerns. These non-jurisdictional sales are made possible because of the Commission's certification of ET; they come from ET's jurisdictional pipeline built over a right-of-way acquired under ET's power of eminent domain. Under a 6.5 percent rate of return (equivalent to 8.53 percent return on equity) on jurisdictional business, the additional non-jurisdictional revenues are sufficient to increase the total return on equity to 11.7 percent. This compares favorably with the average return on equity (equivalent) of 9 percent for the five-hundred largest corporations in the United States for the year 1963, as shown by the Fortune Magazine Survey.

The Commission does not have jurisdiction over industrial sales. For this reason the non-jurisdictional costs are allocated out and the non-jurisdictional revenues excluded. But the non-jurisdictional business has consequences upon the financial situation of the company and its ability to raise capital because ET is a single company and investors can invest only in the company as a unit. If the non-jurisdictional business of ET produced a low rate of profit it would raise the cost of capital for ET; in such circumstances it would be idle for the Commission to philosophize about ET's ability to raise capital under a rate adequate for the jurisdictional business as a theoretical entity. The cost of capital for such a company would be what the market requires for that company as a whole to raise capital. Thus, the results of the non-jurisdictional business cannot be ignored as a factor in the financial picture of the company—which is what investors consider. As the Commission stated in *Alabama-Tennessee Natural Gas Company*, 27 FPC 1180, 1189 (1962):

> We have no jurisdiction over direct industrial rates and our methods of cost allocation are designed to exclude the related costs in fixing jurisdictional rates. Moreover, the rates of return we determine here for the jurisdictional business are those we deem necessary if the jurisdictional business is to provide its fair share of the return to which the company is entitled. Nevertheless, we need not close our eyes to the beneficial effects of such sales on the company's economic strength in valuating its ability to finance its operations.

And in *In the Matter of Mississippi River Fuel Corp.*, 11 FPC 288, 299 (1952), the Commission stated:

> A 6 percent return for Mississippi means that, on the part of the common equity and surplus deemed associated with the business over which we have rate jurisdiction, the stockholders would realize a return of approximately 9 percent. However, the direct industrial sales are not regulated, so the stockholders will likely realize a higher return on their investment.

The higher equity of ET and the favorable effects on ET's cost of capital of the non-jurisdictional business compensate for the 0.73 percent higher return which the 6.5 percent rate yields on Midwestern's equity.

With a 6.5 percent rate of return, ET should be in position to raise capital for new facilities, for it would be able to offer the public equity which would, in fact, yield over 11 percent.[13]

V

CONCLUSIONS ON COST OF SERVICE AND EXCESS EARNINGS

The cost of service for ET adjusted for both the second and third year of operation of the Virginia extension is shown in Appendix C. The methods used are the same as those used in the Staff cost of service, with these modifications: (a) the use of liberalized depreciation; (b) the exclusion of $60,000 from operating expenses for labor eliminated by automation; (c) inclusion in the rate base of the Elk river facilities which are jurisdictional; (d) although the Atlantic-Seaboard formula was applied with a mileage factor, no mileage factor here was applied to customer accounting expense, sales expense, and general expense, since these items do not vary with milage. *Northern Natural Gas Co.*, 14 FPC 11, 30 (1955).

The excess of jurisdictional revenues under current rates over jurisdictional costs determined pursuant to the principles set forth above, and adjusted for the second and third year of operation of the Virginia extension is shown on the following table:

	Excess revenues
Second year	$700, 000
Third year	819, 000

Source: Appendix F.

VI

RATE DESIGN

This section, Rate Design, discusses the methods for translating the required reductions arising from the excess revenues into appropriate rates.

1. *Participation of the Virginia Extension in Rate Reductions.*

ET's system has three zones. Zones 1 and 2 are in Tennessee and zone 3 is the Virginia extension. To determine Virginia rates, ET has adopted the same 25-cent differential per Mcf of demand and 2.5 cents per Mcf of commodity between zones 2 and 3 as has existed between zones 1 and 2. The present level of rates in the Virginia extension is slightly below that proposed in the certificate case because TGT (from whom ET purchases all its gas) subsequently reduced its rates to ET which in turn lowered its rates in all its zones.

The primary rate design question is whether the Virginia extension should participate in rate reductions resulting from excess revenues.

Knoxville and Chattanooga argue that rate reductions should not be extended to the Virginia extension because it is now receiving service at rates even below the level forecast in the certificate case, because the extension cost $1,900,000 more than estimated in the certificate case, because the interest cost on ET's debt, which was refunded and increased in part for financing the Virginia extension, exceeded the cost ET had estimated therefor in the certificate case, and because the revenues from Colonial will lag a year behind the original estimates. Staff and the Virginia extension argue that the Virginia extension should share in any rate reduction on the same basis as zones 1 and 2. ET asserts that its actions were reasonable and necessary to enable it to begin service to Virginia for the 1964–65 heating season. It argues only that the Virginia extension should be included in its cost of service, and that there are no excess revenues. But it takes no position on the issue whether, if there are excess revenues, the Virginia extension should share in rate reductions arising therefrom.

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[13] Investment by TGT in additional equity of ET yielding 8.53 percent would provide a return of 18.5 percent to TGT's stockholders because of the leverage in TGT's common stock. TGT's common equity is 28 percent of its capitalization: TGT's chief financial officer arranged for ET to borrow money at 5.4 percent under a mortgage in November 1964, while the parent TGT sold debentures at 5 percent in December 1964. If TGT had raised the money for its subsidiary directly it would not have had the advantage of the resulting thin equity arising from its pyramided investment. Of course, TGT would secure the same return from any investment yielding a similar return on its equity. But industrials rarely have the capital leverage of ET.

Knoxville and Chattanooga do not claim that the additional costs and the revenue lag are due to such improvidence that they should be disallowed in this case, nor has proof been offered to warrant such a conclusion. These considerations are therefore irrelevant. As a matter of law, the Virginia extension is entitled to just and reasonable rates on the same basis as zones 1 and 2, as determined by the facts in this proceeding.

It is argued, chiefly by Staff, that since the differential adopted between zones 3 and 2 is the same as that between zones 1 and 2, the zone 3 differential rests on a historical basis which should not be changed. But there is no *a priori* reason why all zone differentials should be identical. There are many instances in the industry where zone differentials are not equal. The result should depend on the economic and operational facts. Moreover the history of the zone 3 differential dates only from December 1964, and a change is not likely to disrupt long established relationships. The historical relationship with respect to zone 3 is hardly a weighty factor on this issue.

A second consideration in rate design, competitive and demand factors, is also not decisive on the question whether zone 3 should participate in a rate reduction. Roanoke in zone 3 purchases from both Atlantic-Seaboard and ET. ET's rates are higher than Atlantic-Seaboard's and will be higher even under the reductions prescribed in this case. But at peak periods Roanoke purchases the maximum amounts of gas that are available from Atlantic; indeed it was because Roanoke could no longer obtain enough gas from Atlantic during the winter that made the extension by ET important to it. Although Roanoke is obligated to pay ET for minimum amounts under its partial requirements tariff, it is reasonable to expect that its purchases from ET would increase if the rates were lower. It is also reasonable to expect that lower rates in zones 1 and 2 would stimulate further growth there. The comparative results will depend on the shape of the demand schedule for the zones and the point on these respective schedules that has been reached. The record does not permit a conclusion whether net demand would be increased more by permitting Virginia to participate in rate reductions or by confining them to zones 1 and 2.

A third consideration in rate design is the relation between zone costs and zone revenues since this gives some indication of the comparative profitability or deficiency of each zone. The following table shows the excess or deficiency of revenues to costs by zones during the third year of operation of the Virginia extension under current rates and under the rates prescribed below:

Excess or (deficiency) over costs: Third year

Zone	Current rates	Prescribed rates
1	$815,000	$211,000
2	22,000	(9,000)
3	(19,000)	(202,000)

Source: Appendices F and G.

Knoxville and Chattanooga stress the deficiency in zone 3 under current rates. They argue that zone 3 should not participate in rate reductions at this time so that it will bear a greater share of its own burden. However, zone 2's excess revenues under current rates are slight and if its rates are reduced substantially it too will incur a deficit. Hence it is also arguable that zone 2 should not share fully in rate reductions. But the parties from zones 1 and 2, Chattanooga and Knoxville, assert that they have agreed that zone 1 will absorb zone 2's loss and that zone 2 should share in any rate reductions even though the excess arises from zone 1. They claim that this will not prejudice zone 3. But an increase in the differential between zones 2 and 3 can be prejudicial to zone 3 even though zone 1 bears zone 2's burden: *e.g.*, under the existing differential, the decision to build a factory in zone 2 or 3 may be marginal; whereas zone 2 might become more attractive if its rates were lowered but not zone 3's. Moreover any agreement between zones 1 and 2 is not controlling because rates are decided pursuant to the law and not by the private agreement of the parties.

In evaluating the zonal revenue-cost relationship, two elements which favor zone 3 should be considered. First, the costing allocations tend to increase the deficiency in zone 3 compared to the results in zones 1 and 2. This is because the third year results are obtained by combining the sales estimates for the third year for Virginia with sales estimates for the first year for the Tennessee zones. However, sales volumes in Tennessee will probably increase during the second and third years, although in the adjusted cost of service they are held constant. Since sales volumes are one of the bases of cost allocation, less costs are allocated to the Tennessee segment and more to the Virginia segment.

A second element favoring zone 3 is that it contributes a disproportionately large share of the total tax savings arising from liberalized depreciation. The Virginia extension constitutes some 25 percent of ET's total investment. But a considerable portion of the Tennessee segment was constructed before 1954 and is therefore not eligible for liberalized depreciation, whereas the Virginia extension facilities being new, are almost entirely eligible. The larger contribution made by the Virginia extension toward tax savings under liberalized depreciation is not fully revealed in the zonal cost-revenue results because the cost allocation formulae tend to spread this saving throughout the system.

At this stage the earnings differential between zones 1 and 3 is still substantial under the prescribed rates, though less than under the current rates. The differential is, however, mitigated when consideration is given to the distorting effects produced from spreading zone 3's excess contribution to tax savings across ET's system, and to the statistical bias which reduces the allocated costs of zones 1 and 2. Also ET estimates that in the fourth year sales in zone 3 will increase by a further $320,000, and this will tend to reduce the deficiency in that zone. Taking these matters into consideration, it is concluded that the reductions in rates should be applied to the three zones on an equivalent basis.[14]

2. *Method of Reducing Rates.*

It is uncontested that the two-part rates for jurisdictional sales in Tennessee as presently set recover more than the cost of service allocated to such sales and that the one-part rates for jurisdictional sales recover less than their cost of service. The methods for effectuating rate reductions recommended by Staff and Chattanooga and which are concurred in by Knoxville are sound. They apply the following principles to reduce the general rate level and also to readjust the relationship between the one-part and the two-part rates: (a) The present rates should be reduced so as to eliminate the over-all excess jurisdictional earnings; (b) the reductions should be in the commodity side only of the two-part rates; (c) the reduction in the two-part rates should be twice that of the one-part rates; (d) the interruptible rates should not be changed because these are largely based on competitive factors. The rates determined on the basis of these principles are set forth in Appendix H.

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[14] In the table on *supra*, p. 561, the disparity between zones 1 and 3 is reduced from $834,000 under current rates to $413,000 under the rates prescribed below. Since the prescribed reductions are related to volumes and since zone 1 uses greater volumes than zone 3, the reduction in the rate per Mcf produces greater dollar savings in zone 1 than in zone 3. As a result, the excess of revenues in zone 1 is reduced more than the deficiency in zone 3 is increased.

VII

ADDITIONAL FINDINGS, CONCLUSIONS AND ORDER

ET's jurisdictional costs by zones adjusted for the second and third year of the Virginia operation are shown in Appendix E. The excess or deficiency by zones of jurisdictional revenues over jurisdictional costs adjusted for the second and third years of operation of the Virginia extension under current rates is shown in Appendix F. A similar comparison under the rates prescribed herein is shown in Appendix G. The current rates and the rates determined to be just and reasonable herein for the second and third year of operation of the Virginia extension are shown in Appendix H.

In addition to the foregoing, it is further found that:

(1) The rates of ET are unjust and unreasonable to the extent that they exceed the rates prescribed above;

(2) The rates of ET shall be fixed in accordance with the principles and at the levels set forth in the preceding portion of this decision.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission,

That the rates set forth in the foregoing decision be and they hereby are fixed as the lawful rates for ET to be hereafter observed and in force.

SEYMOUR WENNER,
Presiding Examiner

APPENDIX A

RP65-4

LIST OF KNOXVILLE, ET AL., COMPLAINANTS

1. Knoxville Utilities Board
2. United Cities Gas Company
3. Volunteer Natural Gas Company
4. Cleveland Natural Gas Company
5. Athens Utility Board
6. Citizens Gas Utility District
7. Cookeville Gas Department
8. Elk River Public Utility District
9. Englewood Natural Gas System
10. First Utility District of Maury County
11. Gallatin Natural Gas System
12. Harriman Utility Board
13. Jefferson-Cocke Utility District
14. Lenoir City Utilities Board
15. Lewisburg Gas Department
16. Livingston Gas Department
17. Loudon Utilities Board
18. Madisonville Gas Company
19. Marion County Natural Gas Company
20. Middle Tennessee Utility District
21. Oak Ridge Utility District
22. City of Rockwood Natural Gas Company
23. Sevier County Utility District
24. City of Sweetwater
25. Unicoi Natural Gas Utility District

APPENDIX B

RP65-4

PRINCIPAL CERTIFICATE GRANTS TO EAST TENNESSEE[1]

1. Chattanooga and Knoxville, 7 FPC 5 (1948)
2. Oak Ridge, Kingsport, Bristol, Johnson City, 8 FPC 836 (1949)
3. Greenville, Kingsport, 11 FPC 427 (1952)
4. Hartsville, 11 FPC 1778 (1952)
5. Harriman, 12 FPC 1001 (1953)
6. Morgan and Scott Counties, 13 FPC 1382 (1953)
7. Boyd's Creek, 13 FPC 1384 (1954)
8. Oak Ridge (additional), 14 FPC 758 (1955)
9. Elk River, 14 FPC 1153 (1955)
10. Cleveland, Sweetwater, 15 FPC 1252 (1956)
11. Johnson City (additional), Unicoi County, 29 FPC 297 (1963)
12. Virginia Extension Opinion No. 435, 32 FPC 158 (1964)

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[1] Excludes certifications for industrial sales and sales to agencies of the United States

APPENDIX C

RP65–4

East Tennessee Natural Gas Co.

[Cost of service adjusted for second year of operation of Virginia Extension]

Item	Total system cost	Cost of Wrigley system	Cost of integrated system		
			Total	Demand	Commodity
Operating expense:					
Gas supply expense:					
Purchased gas	$16, 461, 538	$217, 832	$16, 243, 706	$4, 362, 834	$11, 880, 872
Gas measurement expense	31, 040		31, 040		31, 040
Gas used in operations	(16, 205)		(16, 205)		(16, 205)
Total gas supply expense	16, 476, 373	217, 832	16, 258, 541	4, 362, 834	11, 895, 707
Transmission expense:					
Supervision and engineering	139, 275		139, 275	67, 367	71, 908
Compressor station expense	10, 953		10, 953		10, 953
Compressor station fuel	12, 730		12, 730		12, 730
Other operating costs	326, 947	952	325, 995	162, 998	162, 997
Total operations	489, 905	952	488, 953	230, 365	258, 588
Supervision and engineering	4, 774		4, 774	1, 968	2, 806
Compressor station maintenance	16, 517		16, 517		16, 517
Other maintenance	77, 502		77, 502	38, 751	38, 751
Total maintenance	98, 793		98, 793	40, 719	58, 074
Examiner's adjustment	(60, 000)		(60, 000)	(30, 000)	(30, 000)
Total transmission expense	528, 698	952	527, 746	241, 084	286, 662
Customer accounting expense	39, 887		39, 887		29, 887
Sales expense	100. 531		100, 531		100, 531
Administrative and general expense	514, 911		514, 911	180, 837	334, 074
Total operating expense	17, 660, 400	218, 784	17, 441, 616	4, 784, 755	12, 656, 861
Depreciation	1, 157, 400	1, 188	1, 156, 212	578, 106	578, 106
Taxes:					
Income, deferred in prior years	(5, 656)		(5, 656)	(2, 828)	(2, 828)
Investment tax credit	107, 620		107, 620	53, 810	53, 810
Current Federal income	231, 940	279	231, 661	115, 830	115, 831
State income	29, 881	25	29, 856	14, 928	14, 928
Other	666, 790		666, 790	333, 395	333, 395
Return at 6.5 percent	1, 753, 493	2, 115	1, 751, 378	875, 689	875, 689
Other gas revenues—Credit	(7, 330)		(7, 330)	(3, 665)	(3, 665)
Total cost of service	21, 594, 538	222, 391	21, 372, 147	6, 750, 020	14, 622, 127

APPENDIX C

RP65–4

East Tennessee Natural Gas Co.

[Cost of service adjusted for third year of operation of Virginia Extension]

Item	Total cost	Deduct Wrigley costs	Cost of integrated system		
			Total	Demand	Commodity
Operating expenses:					
Gas supply expense:					
Gas purchased	$16,762,934	$217,832	$16,545,102	$4,491,786	$12,053,316
Purchased gas expense	5,651		5,651		5,651
Total gas supply expense	16,768,585	217,832	16,550,753	4,491,876	12,058,967
Transmission expense:					
Supervision and engineering	139,275		139,275	67,437	71,838
Compressor station expense	10,953		10,953		10,953
Compressor station fuel	12,730	952	11,778		11,778
Other operating costs	336,131		336,131	168,065	168,066
Total operations expense	499,089	952	498,137	235,502	262,635
Supervision and engineering	4,774		4,774	1,968	2,806
Compressor station maintenance	16,517		16,517		16,517
Other maintenance	77,502		77,502	38,751	38,751
Total maintenance expense	98,793		98,793	40,719	58,074
Examiner's adjustment	(60,000)		(60,000)	(30,000)	(30,000)
Total transmission expense	537,882	952	536,930	246,221	290,709
Customer accounting expense	39,887		39,887		39,887
Sales expense	105,172		105,172		105,172
Administrative and general expense	515,156		515,156	187,671	327,485
Total operating expense	17,966,682	218,784	17,747,898	4,925,678	12,822,220
Depreciation	1,171,263	1,188	1,170,075	585,037	585,038
Taxes:					
Income, deferred in previous years	(5,656)		(5,656)	(2,828)	(2,828)
Investment tax credit	171,606		171,606	85,803	85,803
Current Federal income	170,621	202	170,419	85,209	85,210
State income	30,116	18	30,098	15,049	15,049
Other	670,889		670,889	335,444	335,445
Return at 6.5 percent	1,785,217	2,115	1,783,102	891,551	891,551
Other gas revenue—Credit	(7,330)		(7,330)	(3,665)	(3,665)
Total cost of service	21,953,408	222,307	21,731,101	6,917,278	14,813,823

APPENDIX D

RP65-4

East Tennessee Natural Gas Co.

[Savings resulting from flowing through of tax savings arising from the use of liberalized depreciation cost of service adjusted for second year of operation of Virginia Extension]

Item	Amount	Reference
Staff cost of service	$21,952,909	Exhibit 9, schedule. Appendix C, *supra;* p. 565.
Examiner's cost of service	21,594,538	
Decreased total cost	358,371	
Items in decreased total:		
Federal income tax—current	(280,761)	
State income	(24,707)	
Return	7,097	
Decreased due to liberalized depreciation	[1] (298,371)	
Decrease in operating expense	(60,000)	
Total decrease	(358,371)	

[1] This figure includes the effect of the Examiner's allowance of a $40,000 investment for Elk River facilities (CP65-43).

( ) Items decreased.

APPENDIX D

RP65-4

East Tennessee Natural Gas Co.

[Savings resulting from flowing through of tax savings arising from the use of liberalized depreciation cost of service adjusted for third year of operation of Virginia Extension]

Item	Amount	Reference
Staff cost of service	$22,399,441	Exhibit 37, schedule 1, Appendix C, *supra*, p. 566.
Examiner's cost of service	21,953,408	
Decreased total cost	446,033	
Items in decreased total:		
Federal income tax—current	(433,100)	
State income tax	(32,482)	
Return	13,763	
Decrease due to liberalized depreciation	[1] (451,819)	
Other decreases:		
Investment tax credit	63,986	
Operating expense	(60,000)	
Other tax	1,800	
Total decrease	(446,033)	

[1] This figure includes the effect of the Examiner's allowance of a $40,000 investment for Elk River facilities (CP65-43).

( ) Items decreased.

APPENDIX E

RP65-4

East Tennessee Natural Gas Co.

[Allocation of ET's cost of service between jurisdictional and nonjurisdictional customers, broken down by zones, and adjusted for second year of operation]

Item	Total costs			Gas supply costs		Transmission distance factor costs		Transmission nondistance factor costs [1]	
	Total	Demand	Commodity	Demand	Commodity	Demand	Commodity	Demand	Commodity
Jurisdictional costs:									
Zone 1	$10,212,467	$3,587,758	$6,624,709	$2,490,523	$5,539,593	$994,004	$864,155	$103,231	$220,961
Zone 2	2,047,456	790,919	1,256,537	450,812	960,340	321,421	257,891	18,686	38,306
Zone 3	1,722,024	786,502	935,522	376,469	649,149	394,429	260,480	15,604	25,893
Total	13,981,947	5,165,179	8,816,768	3,317,804	7,149,082	1,709,854	1,382,526	137,521	285,160
Nonjurisdictional costs:									
Zone 1	5,431,314	1,073,597	4,357,717	759,526	3,652,101	282,589	559,942	31,482	145,674
Zone 2	1,958,886	511,244	1,447,642	285,504	1,094,524	213,906	309,460	11,834	43,658
Total	7,390,200	1,584,841	5,805,359	1,045,030	4,746,625	496,495	869,402	43,316	189,332
Total system cost	21,372,147	6,750,020	14,622,127	4,362,834	11,895,707	2,206,349	2,251,928	180,837	474,492

ALLOCATION FACTORS

Item	Mcf-miles		Percent		Average of 3-day peak	Average annual volume	Percent	
	Demand	Commodity	Demand	Commodity			Demand	Commodity
Jurisdictional sales:								
Zone 1	18,301,001	11,036,321	45.321	38.374	123,044	71,714	57.085	46.568
Zone 2	5,917,641	3,293,716	14.568	11.452	22,273	12,432	10.333	8.073
Zone 3	7,261,767	2,326,593	17.877	11.567	18,600	8,405	8.629	5,457
Total	31,480,409	17,656,630	77.497	61.393	163,917	92,551	76.047	60.098
Nonjurisdictional costs								
Zone 1	5,202,761	7,151,058	12.808	24.865	37,525	47,279	17.400	30.701
Zone 2	3,938,277	3,952,312	9.695	13.742	14,105	14,169	6.544	9.201
Total	9,141,038	11,103,370	22.503	38.607	51,630	61,448	23.953	39.902
Total system sales	40,621,447	28,760,000	100.000	100.000	215,547	153,999	100.000	100.000

[1] Includes A. & G. Expense, customer accounting expense and sales expense.

APPENDIX E

RP65–4

East Tennessee Natural Gas Co.

[Allocation of ET's cost of service between jurisdictional and nonjurisdictional customers, broken down by zones, and adjusted for third year of operation of Virginia Extension]

Item	Total costs			Gas supply costs		Transmission distance factor costs		Transmission nondistance factor costs[1]	
	Total	Demand	Commodity	Demand	Commodity	Demand	Commodity	Demand	Commodity
Jurisdictional sales									
Zone 1	$10, 169, 303	$3, 563, 909	$6, 605, 394	$2, 501, 431	$5, 538, 563	$957, 966	$849, 796	$104, 512	$217, 035
Zone 2	2, 032, 865	781, 495	1, 251, 370	452, 817	960, 135	309, 759	253, 611	18, 919	37, 624
Zone 3	2, 170, 341	999, 887	1, 170, 454	487, 897	814, 583	491, 605	323, 951	20, 385	31, 920
Total	14, 372, 509	5, 345, 291	9, 027, 218	3, 442, 145	7, 313, 281	1, 759, 330	1, 427, 358	143, 816	286, 579
Nonjurisdictional sales:									
Zone 1	5, 412, 150	1, 067, 102	4, 345, 048	762, 885	3, 651, 335	272, 343	550, 631	31, 874	143, 082
Zone 2	1, 946, 442	504, 885	1, 441, 557	286, 756	1, 094, 351	206, 148	304, 323	11, 981	42, 883
Total	7, 358, 592	1, 571, 987	5, 786, 605	1, 049, 641	4, 745, 686	478, 491	854, 954	43, 855	185, 965
Total system costs	21, 731, 101	6, 917, 278	14, 813, 823	4, 491, 786	12, 058, 967	2, 237, 821	2, 282, 312	187, 671	472, 544

ALLOCATION FACTORS

Item	Mcf-miles		Percent		Average of 3-day peak	Average annual volume	Percent	
	Demand	Commodity	Demand	Commodity			Demand	Commodity
Jurisdictional sales:								
Zone 1	18, 301, 001	11, 036, 321	42. 808	37. 234	123, 044	71, 714	55. 689	45. 929
Zone 2	5, 917, 641	3, 293, 716	13. 842	11. 112	22, 273	12, 432	10. 081	7. 962
Zone 3	9, 391, 785	4, 207, 122	21. 968	14. 194	24, 000	10, 548	10. 862	6. 755
Total	33, 610, 427	18, 537, 159	78. 618	62. 540	169, 317	94, 694	76. 632	60. 646
Nonjurisdictional sales:								
Zone 1	5, 202, 761	7, 151, 058	12. 170	24. 126	37, 525	47, 279	16. 984	30. 279
Zone 2	3, 938, 277	3, 952, 312	9. 212	13. 334	14, 105	14, 169	6. 384	9. 075
Total	9, 141, 038	11, 103, 370	21. 382	37. 460	51, 630	61, 488	23. 368	39. 354
Total system sales	42, 751, 465	29, 640, 529	100. 000	100. 000	220, 947	156, 142	100. 000	100. 000

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[1] Includes A. & G. Expense, customer accounting expense and sales expense.

APPENDIX F

RP65–4

East Tennessee Natural Gas Co.

[Comparison of jurisdictional revenues under *current* rates with ET's jurisdictional costs, by zones, adjusted for second and third year of operation of Virginia Extension]

SECOND YEAR

Zones	Allocated costs[1]	Revenues at rates effective Oct. 1, 1964	Revenue excess or (deficiency)
1	$10, 212, 467	$10, 984, 775	$772, 308
2	2, 047, 456	2, 054, 913	7, 457
3	1, 722, 024	1, 643, 559	(78, 465)
Total	13, 981, 947	14, 683, 247	701, 300
THIRD YEAR			
1	$10, 169, 303	$10, 984, 775	$815, 472
2	2, 032, 865	2, 054, 913	22, 048
3	2, 170, 341	2, 151, 786	(18, 555)
Total	14, 372, 509	15, 191, 474	818, 965

[1] Source: Appendix E.

APPENDIX G

RP65–4

East Tennessee Natural Gas Co.

Comparison of jurisdictional revenues under *prescribed* rates with ET's jurisdictional costs, by zones adjusted for second and third year of operation of Virginia Extension]

SECOND YEAR

Zones	Allocated jurisdictional costs	Revenues at prescribed rates	Revenue excess or (deficiency)	Revenue excess or (deficiency), cents per Mcf
1	$10, 212, 467	$10, 440, 773	$228, 306	0. 87
2	2, 047, 456	2, 032, 257	(15, 199)	(. 33)
3	1, 722, 024	1, 508, 885	(213, 139)	(6. 95)
Total	13, 981, 947	13, 981, 915	(32)	
THIRD YEAR				
1	$10, 169, 303	$10, 380, 084	$210, 781	0. 80
2	2, 032, 865	2, 023, 703	(9, 162)	(. 20)
3	2, 170, 341	1, 968, 566	(201, 775)	(5. 24)
Total	14, 372, 509	14, 372, 353	(156)	

APPENDIX H

RP65–4

East Tennessee Natural Gas Co.

Present rates and prescribed rates for the second and third year of operation of Virginia Extension

Rate schedule	Present rate prices		Determined rate prices	
	Demand	Commodity	Demand	Commodity
		Cents		*Cents*
G-1 and CR-1	$3.25	28.62	$3.25	[1] 23.86
G-1 and CR-1 development		80.00		[1] 80.00
G-2 and CR-2	3.50	31.12	3.50	[1] 26.36
G-2 and CR-2 development		80.00		80.00
CR-3 and CPR-3	3.75	33.62	3.75	[1] 28.86
SG-1		51.37		[1] 49.73
SG-2		55.57		[1] 54.22
S		26.25		26.25
AOS-1		28.62		[1] 23.86
AOS-2		31.12		[1] 26.36
AOS-3		33.62		[1] 28.86
I-1:				
Block 1 [2]		31.57		31.57
Block 2		31.57		31.57
Block 3		31.52		31.52
Block 4		30.82		30.82
I-2:				
Block 1 [2]		35.07		35.07
Block 2		34.52		34.52
Block 3		31.52		31.52
Block 4		30.82		30.82
I-3:				
Block 1 [2]		38.57		38.57
Block 2		37.47		37.47
Block 3		31.52		31.52
Block 4		30.82		30.82

[1] The rates determined by the Examiner based on second-year operations are 0.37 cent per Mcf higher in the commodity component. The demand charges are unchanged.

[2] Block 1—First 2,000 Mcf per month delivered to each customer; Block 2—Next 23,000 Mcf per month delivered to each customer; Block 3—Next 25,000 Mcf per month delivered to each customer; Block 4—Over 50,000 Mcf per month delivered to each customer.

OPINION NO. 489

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64–17

DECLARATORY OPINION AND ORDER DETERMINING JURISDICTION

(Issued April 20, 1966)*

Syllabus

1. Pipeline's sale to Army under Disciplinary Barracks contract is a nonjurisdictional direct sale. PP. 573; 582, *et seq.*
2. Since gas is sold under Fort Leavenworth contract for both direct and resale uses and sale for resale is identifiably separate from nonjurisdictional direct sale, Army is entitled to purchase the resale gas under pipeline's resale tariff without such rate being extended to the nonjurisdictional gas. P. 573.
3. Although gas for Disciplinary Barracks sale is commingled with gas for the Fort Leavenworth sale, the two sales are identifiably separate in their relevant respects so that the former remains a nonjurisdictional direct sale. P. 574.

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*Initial decision appears on p. 578.

4. Commission observes that *City of Hastings* remains good law and is not affected by Supreme Court decision in *Lo-Vaca*. P. 574.
5. Unlike Federal Power Act, under Gas Act, Commission must certificate any sale for resale as well as any transportation of gas for purpose of making a direct sale. P. 575.
6. As a matter of law, no sale for resale may take place, regardless of contractual provisions therefor, without Commission authorization. P. 575.
7. Should pipeline be unwilling to apply for certificate covering the jurisdictional gas, Army has authority, under Section 7(a), to seek an order directing such sale. P. 575.
8. Construing Section 1(b) of the Natural Gas Act, Commission *issues* declaratory opinion and order *determining* jurisdiction.

Chairman White *not participating*.

Commissioner Ross *dissenting*.

Conrad C. Mount, C. H. Mullendore, Jr., Harry S. Littman, Jack Werner and *Melvin Richter* for Cities Service Gas Company.

Major James E. Macklin, Jr. and *Curtis L. Wagner, Jr.* for The Secretary of the Army.

Robert C. Londerholm and *E. Edward Johnson* for Kansas State Corporation Commission.

Joel Yohalem for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

O'CONNOR, *Commissioner:*

The issue in this case is whether certain sales of natural gas by Cities Service Gas Company (Cities) to the U.S. Army (Army) at Fort Leavenworth, Kansas, are "sales for resale" within the meaning of Section 1(b) of the Natural Gas Act (Act), and so subject to the jurisdiction of the Federal Power Commission.[1] This issue first arose in Cities' rate case in Docket No. RP64-9, where Army contended that the sales, which had previously been regarded by Cities and Army as nonjurisdictional direct sales, are jurisdictional sales for resale under the Act. By order issued February 24, 1964, we provided that this issue be severed from Cities' rate proceedings and be determined by declaratory order, pursuant to Section 1.7(c) of our Rules of Practice and Procedure.

The facts of this case are fully described by Presiding Examiner Robert M. Weston in his initial decision issued January 26, 1965, and need only be summarized here. They disclose that the sales here in issue are made by Cities to Army under two contracts, which we shall refer to as the Disciplinary Barracks contract and the Fort Leavenworth contract. The examiner held that the sale under the Disciplinary Barracks contract is not jurisdictional. No party excepted to this conclusion. The examiner also held that the sale under the Fort Leavenworth contract is a jurisdictional sale for resale, since Army resells a portion of the gas bought from Cities under such contract. Cities filed exceptions to this conclusion, and Army and the Commission's Staff filed answers to such exceptions.

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[1] Section 1(b) provides in part pertinent that "The provisions of this Act shall apply * * * to the sale in interstate commerce of natural gas for resale * * *, but shall not apply to any other * * * sale of natural gas * * *" Sales of gas not resold but consumed by the purchaser, *i.e.*, direct sales, are not subject to Commission jurisdiction. *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 4, (1961). There is no question but that the sales in this case are "in interstate commerce."

We affirm the examiner's conclusion that the Disciplinary Barracks sale is nonjurisdictional. However, we must reverse his conclusion that the Fort Leavenworth sale in its entirety constitutes a jurisdictional sale for resale. The facts are clear that only a small proportion—some 6.7 percent—of the gas covered by the Fort Leavenworth contract is resold. This sale for resale clearly is identifiably separate from the nonjurisdictional direct sale to Army for its own consumption which involves the great bulk of the gas. Consequently, while we believe for the reasons set forth below that the Army is entitled to purchase the gas it sells for resale under Cities' resale tariffs on file with this Commission, we do not see any basis for concluding that Cities must extend this same tariff rate to the gas it sells to the Army for its direct use.

The relevant facts are stipulated by Cities and Army and are not seriously disputed by any party. They reveal that Cities owns and operates a 16-inch transmission line extending from a point in northeastern Kansas to St. Joseph, Missouri. En route the line crosses the Fort Leavenworth, Kansas, military reservation where the sales to Army are made. At a point near the built-up area of the reservation, Cities operates a central meter from which volumes of gas flow into two laterals Cities owns and operates: a twelve-inch lateral (narrowing to six and four inches) which delivers gas to the Disciplinary Barracks; and a 6-inch lateral which delivers gas to the Federal Penitentiary under a contract with the Justice Department not in issue here. Cities' sale to Army under the Disciplinary Barracks contract, which involves interruptible service, is made at the end of the aforesaid Disciplinary Barracks lateral. Cities' sale to Army under the Fort Leavenworth contract, which involves firm service, is made principally from several taps on the above two laterals through which gas is delivered into small diameter lines operated by Army. Also, at the central meter, gas sold under the Fort Leavenworth contract flows directly into other Army facilities extending northward to housing in that area. The volumes of gas delivered to Army under the Disciplinary Barracks contract are actually measured, while the volumes delivered under the Fort Leavenworth contract are determined by deducting from the volume metered at Cities' central meter, the volume metered at the Disciplinary Barracks and the volume delivered to the Federal Penitentiary.

Cities commenced its sales to Army in 1928 and has continued them to the present time under successive contracts. Up to the time of the Army's intervening complaint here, Army and Cities always considered such sales to be nonjurisdictional direct sales. Likewise, on December 28, 1943, 4 FPC 471, five years after the enactment of the Natural Gas Act, we issued a certificate to Cities under the "grandfather clause" of Section 7(c), authorizing Cities to transport gas to Army as a mainline, industrial customer. Cities has never been required to file these contracts with the Commission, but has been furnishing them for informational purposes pursuant to Section 155.1 of the Commission's Regulations under the Act which provides for the filing of contracts and rate schedules for direct industrial sales. The present Fort Leavenworth contract, which is dated May 1, 1958, provides for termination by either party upon notice.

In concluding that the Disciplinary Barracks sale is not a jurisdictional sale for resale, the examiner relied primarily on *City of Hastings, Nebraska* v. *F.P.C.*, 221 F. 2d 31 (CADC–1954), cert. den., 349 U.S. 920 (1955). In that case, the City of Hastings filed a complaint with the Commission against a natural-gas company with respect to a direct sale by the company of gas the city consumed in its own power plant, which gas was commingled with gas resold in its distribution operations. The Commission dismissed the city's complaint for lack of jurisdiction over the direct sale. The court affirmed, holding that even though the gas for the two sales was commingled, the Commission had no jurisdiction over the direct sale, where in fact the direct sale and the sale for resale are in relevant respects identifiably separate transactions. On the facts of that case, the relevant factors included the rates, contracts, delivery points, measuring facilities, billing, and other features of the two transactions. Applying this holding to the facts of this case, the examiner concluded that although the gas for the Disciplinary Barracks sale is commingled with gas for the Fort Leavenworth sale (which latter sale he thought was jurisdictional), the two sales are in fact identifiably separate in their relevant respects so that the Disciplinary Barracks sale remains a nonjurisdictional direct sale.

We agree with the result reached by the examiner on this point. Specifically, we believe that the *City of Hastings* case remains good law and is not affected by the decision of the Supreme Court in *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366. The facts are clear that none of the Disciplinary Barracks gas is resold. Considering the relevant factors, it is clear that whatever the status of the Fort Leavenworth sale, the Disciplinary Barracks sale is a direct sale.

Turning to Cities' sale under the Fort Leavenworth contract, to support his conclusion that Army's resale of a small portion of this gas makes the entire transaction a jurisdictional sale for resale, the examiner relied principally on *California Electric Power Co.* v. *F.P.C.*, 199 F. 2d 206 (CA9–1952), cert. den., 345 U.S. 934. In that case California Electric sold energy to Navy which resold approximately 18.7 percent to residents of a civilian housing project and private business concessionaires on the Depot. The circuit court held the entire flow to be a jurisdictional sale for resale primarily because it believed the commingling of the power sold to Navy made it impossible to identify separately or distinguish the sale of energy for consumption by Navy, and the sale for resale by Navy.

The *California Electric Power Company* case clearly cannot be determinative on this point in the light of the Supreme Court's subsequent decision in *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, 316–318. For there, the Supreme Court made clear that while "the impossibility of separating interstate from intrastate electricity" once it is commingled, requires Federal rate jurisdiction over all sales of such power, the question of whether power from a commingled flow resold by the purchaser may be distinguished from power which the purchaser utilizes for its own purposes is "a different one." While the court did not find it necessary in that case to decide whether commingling of electric power at the generating source required entire Federal jurisdiction or whether it could be "proportionally limited," we think insofar as the transmission and sale of natural gas is concerned, in appropriate circumstances, it can. See *City of Hastings*, *supra*.

This does not dispose of the question we have before us. As the Supreme Court made clear in the *United States* v. *Public Utilities Commission of California*, *supra*, even assuming that there can be a proportional separation between the gas sold for resale and the gas sold for the purchaser's direct use, whether or not such a distinction had been made in a particular case "would turn, of course, on whether an essentially separate transaction covering the power directly consumed by the purchaser is identifiable." Moreover, the court made clear that (1) in the absence of such separate transactions the sale in its totality is jurisdictional and (2) it is not enough that "as an engineering proposition" the two uses be separately identifiable and instead that any jurisdictional bifurcation must be in terms of "separate rate, separate negotiations, separate contracts, or separate rate regulation by official bodies."

Nevertheless, the fact that both the Commission and the parties have previously treated the Cities-Army transaction as a single direct sale and the fact that the existing contract between Cities and the Army does not distinguish between that part of the gas which the Army uses for its own purposes and that which it resells, does not, in our opinion, mean either that the Army must continue to take all of its gas pursuant to the original direct sale authorization or that Cities must now sell all of the gas the Army purchases pursuant to its resale tariffs because some small part thereof is resold. On the contrary, the Natural Gas Act provides the appropriate remedy which is fully consistent with the decision of the Supreme Court in *United States* v. *Public Utilities Commission of California, supra.* Unlike the Federal Power Act, under the Natural Gas Act, the Commission must certificate any sale for resale as well as any transportation of gas for the purpose of making a direct sale. As a matter of law, no sale for resale may take place, regardless of contractual provisions therefor, in the absence of Commission authorization. Since it seems clear, in the light of the facts discussed above, that prior to the initiation of the Army's complaint herein, the Commission had not consciously authorized any sale for resale, the entire sale by Cities to the Army up to the time appropriate relief procedures, if necessary, are prescribed, must be treated as a sale for the Army's own use.

The fact that Cities sale to the Army was originally treated as a direct sale, and only the interstate transportation required therefor was previously certificated, does not, however, mean that we are without power to modify the certificate when it is properly brought to our attention that the original factual situation has changed. On the contrary, the Natural Gas Act provides a specific procedure for dealing with just this type of situation. For if Cities is unwilling to apply for a certificate to sell the Army under its jurisdictional tariffs whatever portions of the gas may be resold by the Army, the Army has the authority in view of its long and unchallenged right to receive service for the sales herein, under Section 7(a) of the Natural Gas Act to seek an order from the Commission directing Cities to sell gas to it under its appropriate resale tariff to the extent it is in fact reselling it. It is clear as the record before us that Army does separately identify, by separate billings based upon measurements or estimates, the customers or classes of customers to whom it resells gas. The Army need not fear that, if in the absence of agreement with Cities it finds itself required to exercise its right to cancel its existing contract and seek relief pursuant to the provisions of Section 7(a) of the Act, Cities could cease providing the Army with the gas it needs for its own consumptive uses. Regardless of the termination of contractual relationships between the two parties, Cities would not be authorized to abandon service to the Army in the absence of an order by the Commission pursuant to the provisions of Section 7(b) of the Act.

In short, we believe that, while the Army is not in a position here to require Cities to provide all of the gas it uses at Fort Leavenworth under Cities' resale tariffs, merely because a small percentage thereof is sold for resale, the Army does have the means to require Cities to sell it the portion of gas the Army resells within Fort Leavenworth at Cities applicable resale tariff. However, we shall not attempt herein to enter any definitive order implementing these views. Instead, we shall give the parties a reasonable time to conduct negotiations consistent with views expressed herein looking towards a mutually satisfactory resolution of their conflicting interests. In the event such negotiations are not fruitful the Army will, of course, be authorized to file such applications pursuant to Section 7(a) of the Act as it may then deem appropriate.

In view of the declaratory opinion rendered above, we shall terminate this proceeding, for no further immediate relief has been requested by the parties.

The Commission further finds:

Except for the volumes of gas in fact resold by Army referred to hereinabove and described more fully in the examiner's decision, sales to Army at issue in this proceeding are not "sales for resale" within the meaning of Section 1(b), and are not subject to the Commission's jurisdiction.

The Commission orders:

(A) The examiner's decision issued in this case on January 26, 1965, is adopted in part and reversed in part, as more fully set forth hereinabove.

(B) Except to the extent granted herein, the exceptions to the examiner's decision are denied.

(C) This proceeding is terminated.

Commissioner Ross *dissenting.*

Chairman White *not participating.*

Ross, *Commissioner, dissenting:*

At issue here is whether the sale of gas by Cities Service to the U.S. Army under the so-called Fort Leavenworth contract is a sale for resale in interstate commerce within the meaning of Section 1(b) of the Natural Gas Act. The parties have stipulated that the sale is in interstate commerce, so that the principal question is whether the Army resells the gas.

Under the Fort Leavenworth contract, the Army has a right to resell all or a portion of the gas. In addition, the majority does not dispute that the Army resells some of the gas. Indeed, the stipulation signed by all the parties lists the various persons and organizations to whom the Army makes resales, and Cities Service does not appear seriously to contest this point. Nor does the majority disagree that the authorities upon which Staff and the Examiner relied, notably the *California Electric Power Company* cases and the *City of Hastings* case, are controlling.[1] My disagreement with the majority centers on the meaning of these authorities. More specifically, our disagreement hinges on the significance of the resale by the Army of some of the gas it purchases under the Fort Leavenworth contract.

It seems clear that there can be a jurisdictional and non-jurisdictional sale of gas between the same parties. This was suggested by *U.S.* v. *P.U.C., supra,* and applied in the *City of Hastings, supra.* However, the Supreme Court established very precise guidelines controlling the jurisdictional determination of transactions. The Court held that the determinant for making a proportional division between jurisdictional and non-jurisdictional power sold in interstate commerce is the delineation of "sale for resale." That determination, in turn, hinges on whether an essentially separate transaction covering the power directly consumed by the purchaser is identifiable. In the *California* case, the Court found no such showing. It stated:

> The present record will not permit such a finding. It may be that as an engineering proposition, accurate measurement of the volume resold and the volume directly consumed by the two parties is possible for each billing period. But there is no record evidence of separate rates, separate

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[1] *California Electric Power Company,* 10 FPC 152, affirmed 199 F. 2d 206, cert. den., 345 U.S. 934. *United States* v. *Public Utilities Commission of California,* 345 U.S. 295, which resulted from the same Commission's jurisdiction over the sales there in question; *City of Hastings* v. *F.P.C.,* 221 F. 2d 31 (D.C. Cir.) cert. den. 349 U.S. 920.

> negotiations, separate contracts or separate rate regulation by official bodies, in short that the "sales" themselves were separate, and it is in these terms that the Act would require us to fix the limits of the jurisdictional grant. (345 U.S. 318)[2]

There is, in this case, an example where this principle can be applied to limit federal jurisdiction. Cities Service has two contracts with the Army. One is the aforementioned Fort Leavenworth contract. The other is the Disciplinary Barracks contract. The latter constitutes an essentially separate transaction from the Fort Leavenworth agreement. The volumes sold thereunder are accurately measured and separately billed. All of the gas is used directly by the Army. While this gas is originally commingled with that sold under the Fort Leavenworth contract, this may be construed as a non-jurisdictional sale.

However, the same cannot be said for volumes sold under the Fort Leavenworth contract. There is but one Fort Leavenworth contract which does not involve "essentially separate transactions." Part of the gas is resold by the Army under this contract, and "there is no evidence of separate rates, separate negotiations, separate contracts, or separate rate regulations by official bodies." Thus, the Commission is without authority to split its jurisdiction under this single contract, and the entire transaction comes within the purview of the Gas Act.

There is a suggestion on page 575 of the opinion that the entire transaction must be treated as non-jurisdictional because "the Commission had not consciously authorized any sale for resale." This suggestion necessarily assumes that there is a substantial difference in the reach of Federal jurisdiction under the Natural Gas Act and the Federal Power Act on the basis of the certificate authority provided in the former. In other words, the same factual situation may be a sale for resale under the Power Act but not under the Gas Act, somehow because of the existence of certification of authority in the Gas Act. Apart from the basic difficulty in trying to comprehend how certification could possibly change the underlying factual situation where energy is sold for resale, for years, it has been assumed that the jurisdiction granted under both Acts was the same. Cases decided under one Act are used interchangeably by parties, commissions and courts in determining the meaning of the other. Indeed, in the *Colton* case,[3] which involved a question very similar to that presented here, the Supreme Court held:

> The Natural Gas Act grew out of the same judicial history as did the part of the Federal Power Act with which we are here concerned; and Section 201(b) of the Power Act has its counterpart in section 1(b) of the Gas Act, 15 U.S.C., section 717(b), which became law three years later in 1938.

While I certainly appreciate the difficulties experienced by the majority in preparing an opinion supporting its predetermined result, it nevertheless is asking a lot to accept the proposition that the Commission's certificate authority designed to give the Commission *more* authority, constitutes a basis for finding that the Commission was granted less.

Other readers may completely disagree that the majority made such an extreme suggestion. They may claim that the majority did not repudiate the California authorities in favor of a new test: "the Commission's conscious exercise of its certification authority." They would contend that this Commission would never abandon such sound authority of the California decisions in favor of speculating on the psychic taste of Commissions, long since departed, in issuing routine certificates. They too would point to language in the majority opinion also on page 575 which states that certification cannot control jurisdiction determinations "when * * * the original factual situation has changed." In other words, the basic factual situation, presumably in light of applicable legal precedent, and not certification is what controls jurisdictional determinations under the Gas Act, as well as the Power Act.

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[2] The majority seems to agree with this statement of the law. I say seems to agree, because while the language of the *California* decision is correctly included in the opinion, as controlling, it is strangely not applied to the circumstances of this case, or otherwise used in reaching the decision.

[3] *F.P.C. v. Southern California Edison Co.*, 376 U.S. 205 (1964).

To some, a jurisdictional finding might represent a harsh decision since Cities Service always considered this a non-jurisdictional transaction. Fortunately, or unfortunately depending on one's point of view, jurisdictional determinations are not based on equitable factors. In any event, to the extent the majority seeks to achieve a "practical result" in this case, it should have considered the difficulty its decision creates. Under the decision, the volumes resold by the Army are subject to Cities Service's applicable interstate tariffs upon a 7(a) application by the Army. This means that annually, or even monthly, the Army may be filing successive 7(a) applications as the volume of its resales change. To the extent Cities Service disagrees with the Army's representations, the Commission is faced with a contested proceeding, a decision in which might well require an unconscionable period of time if this case is any example. This problem is highlighted by: 1) volumes billed under the Fort Leavenworth contract are not independently metered, and include line losses and other unaccounted-for gas; 2) the volumes resold by the Army are not metered, but only estimated. Thus, the decision here intensifies rather than resolves the issue.

In summary, I dissent to the majority's determination of the jurisdictional nature of the Fort Leavenworth contract. The record is clear that this gas moves in interstate commerce. It is further conceded that some of the gas is resold. Since essentially separate transactions are not involved, it necessarily follows that gas sold by Cities Service to the Army under this contract constitutes a sale for resale in interstate commerce within the meaning of Section 1(b) of the Natural Gas Act.

INITIAL DECISION

OF THE PRESIDING EXAMINER DETERMINING JURISDICTIONAL ISSUE

(Issued January 26, 1965)

WESTON, *Presiding Examiner:* This proceeding was instituted by order of February 24, 1964 as a "separate proceeding looking toward the issuance of a declaratory order" to settle a question first presented in the pending Cities Service rate case, Docket No. RP64–9. The question is, whether sales of gas by Cities Service to the U.S. Army at Fort Leavenworth, Kansas, are "sales in interstate commerce of natural gas for resale" within the meaning of Section 1(b) of the Natural Gas Act, and therefore subject to the jurisdiction of the Commission. The issue arises because the Army believes itself eligible to take most of such gas under Cities Service's Rate Schedule F–2, applicable to gas sold for resale, rather than under the terms of a certain contract described later.

Procedural matters. The facts were stipulated by Cities Service and the Army on July 1, 1964. Staff and the Kansas State Corporation Commission did not become formal parties to the stipulation, but have not presented other facts, or arguments in derogation of the stipulation. The stipulation and exhibits thereto will accordingly be accepted as the evidence herein. It should be noted that the stipulation has saved the parties and the consumers the needless expense of lengthy hearings.

On July 21, 1964, Cities Service moved for the omission of the intermediate decision procedure. The motion was opposed by Staff and the Army, and was denied by Commission order of August 5, 1964, 32 FPC 518.

Reply briefs were filed October 7, 1964. The Kansas State Corporation Commission, which had not filed an original brief, filed a reply brief which in general (1) states the existence of proceedings in their Docket 73,100–U for the determination of the jurisdiction of that Commission over the sales from Cities Service to the Army at Fort Leavenworth, (2) agrees with certain legal arguments made by Cities Service in its brief, and (3) draws attention to the possibility of administrative confusion if the sales are determined to be subject to both Federal and State regulation.

Staff Counsel on October 13, 1964 moved to strike substantially all such reply brief on the ground that the material therein "consists of arguments which should have been presented in an initial brief", and Staff Counsel also submitted responsive arguments for consideration in the event the motion to strike were to be denied. Staff's thesis in presenting the response is that if the Kansas presentation had been made in an initial brief, "Staff surely would have responded."

The matter is best settled by accepting Staff's alternative and considering both the Kansas brief and Staff's response. The motion to strike is denied and the Response of the Commission Staff filed October 13, 1964 is accepted for consideration as a brief filed herein.

On November 13, 1964 Cities Service moved for leave to file a supplemental brief, alleging that the reply briefs of the Army and the Staff "both contain new material and allegations." The motion was opposed by the Army and the Staff in respective filings of November 20 and 23, 1964. The proposed supplemental brief has been read. It contains no new material of substance, and extends unnecessarily the arguments on the basic issue contained in the initial and reply briefs. The motion is therefore denied.

Facilities and contracts in general. A Cities Service 16″ pipeline from the south en route to St. Joseph, Missouri traverses the Fort Leavenworth military reservation in Kansas. The built-up area of the reservation consists of two large installations—the U.S. Federal Penitentiary and the U.S. Army Disciplinary Barracks—and numerous houses, three schools, and a variety of commercial and recreational service facilities. Fort Leavenworth has its own gas distribution system, consisting of about 18 miles of distribution lines.

At a point where the 16″ pipeline enters the built-up area, Cities Service has located a metering station, which measures the input. Two Cities Service laterals originate at the metering station: a 12″ high pressure main part way, succeeded by a 6″ and a 4″ main, goes to the Disciplinary Barracks; and a 6″ main goes to the Penitentiary.

Several taps on these Cities Service laterals feed gas into the Army's distribution system. At the metering station, one tap takes gas down a 4″ distribution line along Biddle Boulevard. On the Disciplinary Barracks lateral, taps feed into three distribution lines serving various houses and buildings in the area. On the Penitentiary lateral two taps feed into the lines serving the Capehart Housing Area.

The gas is sold under the terms of two contracts between Cities Service and the Army which the parties describe as the "Fort Leavenworth", or principal contract, and the "Disciplinary Barracks" contract. In general, the Fort

Leavenworth contract of May 1, 1958 provides for firm service of unlimited quantities of gas into the Army's distribution system through the taps just described. In general, the Disciplinary Barracks contract of November 5, 1957 provides for interruptible service to the said Barracks, which lie at the end of one of the two laterals just described, and where the gas served to the Barracks is metered. The rate provided by the principal contract is 31 cents per Mcf. The rate for the Disciplinary Barracks contract starts at 47 cents per Mcf for the first 300 Mcf each month, and decreases to 32 cents per Mcf for the next 700 Mcf and 22 cents per Mcf for all additional gas taken during the given month.

The Fort Leavenworth contract recites an estimated maximum demand of 200 Mcf per hour, 4,000 Mcf per day, and 300,000 Mcf per annum at an estimated annual cost as of the date of the contract of $84,000 (based on the rate of 31 cents per Mcf for deliveries from July 1, 1959 to date). In contrast to the actual measurement of gas delivered under the Disciplinary Barracks contract, the "total volumes of gas sold and delivered under the terms of the Fort Leavenworth contract are determined by deducting from the amount metered at" the Cities Service input metering station described above, (a) "the amounts metered and delivered" at the Disciplinary Barracks and (b) the amounts delivered at the Penitentiary. (Stip., par. 11). It will be noted that under this method, the Army bears the cost of line losses and unaccounted-for gas, and that the Fort Leavenworth contract therefore involves a small degree of estimation of actual deliveries rather than the metering of actual deliveries.

As mentioned above, the gas sold to the Army under the Fort Leavenworth contract is supplied by the Army over its own distribution system to housing and service consumers. Some of these consumers pay the Army for the gas service. The following table, derived from Exhibit 9 and the Cities Service annual Form 2 reports, shows for the years 1961, 1962 and 1963 the Mcf and dollar amounts of gas (a) purchased by the Army, and (b) supplied by the Army to paying customers:

	1961		1962		1963	
	Mcf	Dollars	Mcf	Dollars	Mcf	Dollars
(a)	718, 886	$222, 854. 66	725, 280	$224, 836. 80	724, 973	$224, 741. 63
(b)	47, 501	19, 825. 40	48, 957	20, 351. 48	48, 287	20, 118. 13

The Army and its consumers. There are about 152 housing and other facilities supplied with gas sold by the Army and included in the above line (b) totals. Three principal categories of such sales are sales to—(1) 128 sets of inadequate housing, in which families have elected to live at rentals less than their quarters allowance, and who pay monthly charges on account of gas and other services, (2) "private associations * * * permitted by the Army to operate within Fort Leavenworth because of participation therein, or benefits accruing therefrom, to Army personnel assigned to Fort Leavenworth and/or their dependents" (Stip., par. 17), including three public schools, and (3) 12 occupants of quarters, "who, as civilians or foreign liaison officers, are authorized to live in Government quarters, but who must pay both for rental and for utility service," and as to which the "flat monthly charge for gas furnished by the Army varies depending upon the size of the quarters and the appliances used." (Stip. par. 18.)

Relatively minor amounts of gas and revenues are involved in service to other paying customers, such as: Armed Forces Co-operative Insurance Association, Boughton Memorial (Masonic Lodge), Post Nursery, Beauty Shop, Book Department, Party Shop, various post exchanges, coffee and barber shops, a restaurant, a filling station, a golf club and a hunt club. As to all categories except the "128 sets of inadequate housing" (who pay flat amounts for gas, as well as flat amounts for other utility service)[1] "a statement of account for natural gas, among other things, is sent at the end of each month by the Finance and Accounting Division, Fort Leavenworth" to the consumer, and the consumer then "pays in cash, or remits a check" for his charges, whereupon the said Division credits the funds from gas payments "to the appropriation from which Cities is paid for gas purchased by the Army under the Fort Leavenworth contract." (Stip. par. 19.)

General considerations of fact. Cities Service has been selling gas to Fort Leavenworth since July 1, 1928 under successive contracts; it was not until September 25, 1963 that the Army advanced its claim that it was entitled to a "sale for resale" rather than a contract rate. Cities Service since 1948 has furnished the Commission with copies of the contracts pursuant to Sec. 155.1 of the Regulations under the Natural Gas Act, covering "the direct sale of natural gas to industrial consumers for consumption where such contract involves the sale of 100,000 Mcf per year or more."

The total amount of gas sold to paying customers, which the Army claims are "sales for resale" under the Natural Gas Act, during the test years 1961–1963 inclusive amounted to only about 6.7% of the total volumes purchased under the Fort Leavenworth contract. All the rest of the gas was paid for by the Army.

According to paragraph 7 of the stipulation, at no time prior to September 25, 1963 "did the Army advise Cities nor was Cities aware that the Army allegedly was reselling a portion of the gas sold to the Army under the Fort Leavenworth contract."

According to paragraph 22 of the Stipulation, "some of the gas purchased from Cities under the Fort Leavenworth contract is used in the Government housing of types not previously mentioned", *i.e.*, to service personnel who receive "housing and utilities at Government expense."

Discussion of the facts. As is clear from the exhibits to the stipulation, Leavenworth shares the characteristics of a typical Army post. It is a substantially self-contained compound, providing utility and other services to meet the living requirements of families and personnel stationed there. From the standpoint of gas engineering, the service to the Fort Leavenworth distribution system is indistinguishable from service to a system supplying civilians. See "General Gas Map," Exhibit 6 herein. Fort Leavenworth can for all practical purposes relevant to gas consumption be characterized as a "company town". The town has certain "industries"—including the Disciplinary Barracks—related to the military establishment. The town is also the site of the Federal Penitentiary, which as a matter of common knowledge is operated by the Department of Justice. Cities Service supplies the heating and other gas needs of the military establishment and its paying customers.

The fact that the supply under the Fort Leavenworth contract is under firm, rather than interruptible, commitment is not without significance. Firm service is consistent with service to other Cities Service distribution customers under its Rate Schedule F–2. The distinction between the Army and other distribution customers is that the Army pays for the gas service to some of the consumers (military personnel who live in adequate quarters, and receive "housing and utilities at Government expense", Stip., par. 22), and collects money for gas service only from certain other categories of consumers using a relatively minor proportion of total consumption. The record is silent as to the proportion of total consumption used by Army personnel who receive utility service at Government expense.

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[1] The sales to this category are billed on the basis of estimates of consumption which are in turn based on tables for the various kinds of gas appliances and heaters. (Exh. 9.) As a matter of bookkeeping, the Army makes a single debit by adding the separate amounts for rent, gas, and other services and enters the debit in on the military pay vouchers of each service person living in the inadequate quarters. (Stip., par. 20.)

Contentions of the parties. In general, Staff concedes, and the Army does not contend otherwise, that the Disciplinary Barracks contract does not involve a sale for resale and is not subject to the Commission's jurisdiction. Staff and the Army argue that some of the supply under the Fort Leavenworth contract is resold, and that all of such supply is therefore jurisdictional.

In general, Cities Service, supported by the Kansas Commission, argues that the Army does not really resell the gas supplied to the occupants of the inadequate quarters and the other paying customers described above, and that the Fort Leavenworth contract is non-jurisdictional, because (a) "the bulk of these alleged resales are not metered'" but estimated, (b) the resales are not typically to civilians, but to military personnel and tenants of Army housing and service units, (c) the sale to the tenants of Army housing is "only a bookkeeping transaction", (d) if resales are made, they are *de minimis* and without Cities Service's knowledge, and finally (e) under the circumstances, the Commission's jurisdiction should be limited at most to the amounts resold, as to which the Commission should "allow Cities a reasonable opportunity to negotiate a separate contract with the Army." Initial Brief of Cities Service, *passim*.

The arguments of all parties are based on a thoroughgoing analysis of the judicial precedents, ably presented by Major Macklin, Staff Counsel, and counsel for Cities Service, backed by the Kansas Commission. In view of the numerous pending cases involving the coverage of Section 1(b) of the Natural Gas Act, rather extensive quotations from the authorities are warranted.

The Disciplinary Barracks Contract and the City of Hastings Case

We have seen that the Cities Service lateral to the Disciplinary Barracks also serves Fort Leavenworth's distribution system, from which, as later concluded herein, some sales for resale are made by the Army. We have seen that the Disciplinary Barracks contract and physical connection is separate and distinct from the principal contract and the supply thereunder in respect of metering, rates, type of service, and billing.

In *City of Hastings* v. *F.P.C.*, 221 F. 2d 31 (CADC), cert. denied, 349 U.S. 920, Hastings bought gas at the town border under two contracts; (1) Rate Schedule G–1, applicable to gas for resale by the City, and (2) a contract covering supply to the City's electric power plant (the supply being through City facilities covered by a transportation charge), at which point the gas for this industrial use was separately measured. The Court held that since the Commission had found with basis "the existence of separate rates, separate billings, separate negotiations, separate contracts, separate allocation of gas and effective separate measurement facilities" (221 F. 2d at 36), a delivery of the power plant gas at the meter at the power plant, and an intentional exclusion of the gas there supplied from the G–1 resale rate schedule, the Commission's conclusion—that it had no jurisdiction to require the utility to supply the power plant gas under its G–1 resale rate schedule—should be affirmed. Judge Fahy dissented.

On the authority of this case, Staff concedes that sales under the Disciplinary Barracks contract are non-jurisdictional. The Army does not argue otherwise. See also *Panhandle Eastern Pipe Line Co.* v. *P.S.C. of Indiana*, 332 U.S. 507, and *Panhandle Eastern Pipe Line Co.* v. *P.S.C. of Michigan*, 341 U.S. 329.

Staff recognizes, however, that the issue is not entirely settled. In *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, the utility generated electricity in California and delivered it in the same State to Navy lines, which transmitted the power to Hawthorne, Nevada, where it was stepped down and used in the Navy's ammunition depot, "largely in official industrial operations; between 15% and 29%, however, is distributed for consumption in the private households and enterprises of tenants at the Navy's low-cost housing project nearby." (345 U.S. at 298.)

The Supreme Court reversed a California determination asserting jurisdiction over the rates for this and another sale, stating the relevant crucial issue to be whether the sale to the Navy is a "sale for resale," which the Court said was a "different" problem from the problem whether sales are "in interstate commerce." The Court found the "sale for resale" issue "not ripe for our consideration" in the absence of evidence "whether an essentially separate transaction covering the power directly consumed by the purchaser is identifiable." (345 U.S. at 317–18.) The record did not contain evidence as to the existence or non-existence of "separate rates, separate negotiations, separate contracts or separate rate regulation by official bodies, in short that the "sales" themselves were separate * * *." (345 U.S. at 318.)

Staff (Br. 4) construes this case to be a reservation of judgment on the issue of whether or not an essentially separate direct sale is nonetheless subject to Commission jurisdiction where the supply is commingled with supply furnished for resale. The Supreme Court notes (345 U.S. at 318, ftn. 28) the decision in *California Electric Power Co.* (later cited and considered herein), "now pending before us on a petition for certiorari," with a more complete record, holding that the so-called "Penn Water" case, later discussed, controlled where direct supply was commingled with resale supply. The Supreme Court, citing cases, concludes the footnote as follows: "We do not decide the question but rather note that the Commission's own view of the matter may still be in the formative stage."

In view of Cities Service's extensive reliance thereon (Br. 29–31, Reply Br. 4–5), it is appropriate to consider more carefully Mr. Justice Reed's observation, noted above, that the "in interstate commerce" issue is "different" from the "sale for resale" issue. (345 U.S. at 317). Cities Service does not adduce any *reasons* for a rule distinguishing case (a)—"where some of the supply is interstate, all of the supply is jurisdictional"—from case (b)—"where some of the supply is for resale, all of the supply is jurisdictional". No distinction can be built upon the language of Section 1(b) of the Act. As will be seen, the Ninth Circuit, in the case cited by Mr. Justice Reed, in footnote 28 cited above, found no distinction in principle, and used authorities on the "in interstate commerce" issue to decide the "sale for resale" issue.

On careful consideration, in the context here presented, it is concluded that the (1) "in interstate commerce" issue is substantially identical to the (2) "sale for resale" issue, and that the authorities bearing on the first issue are not only pertinent, but controlling on certain arguments and contentions advanced by Cities Service herein relating to the second issue. In both cases, the utility seeks to escape Federal regulation by way of contractual arrangements in the form of non-jurisdictional sales (intrastate sales in the one case, direct sales in the other). In both cases, the utility eludes or seeks to discount the engineering and scientific facts as to the flow of utility service—in part interstate in the one case, in part for resale in the other. In both cases, the utility relies on matters of subjective intent expressed in the contracts—the intent that the gas or electricity is destined for consumption intrastate, or the intent that the sales are not "for the purpose, or at the very least, with a view to such resale". (C. S. Br., 24) In both cases, the contractual arrangements may or may not reflect the operating realities.

There may be factual situations in which the judicial authorities dealing with the interstate commerce issue have no relevance to problems of whether or not the utility is selling gas for resale, on a showing that the gas is actually resold. To conclude our consideration of Mr. Justice Reed's observation, we may note that the facts, arguments and policy of the "sale for resale" issue in the case at bar are identical with the facts, arguments and policy of the many authorities on the "in interstate commerce" issue, and that no distinction in principle has been shown.

However, the facts as to the supply of gas over the lateral to the Disciplinary Barracks do not present a clear cut controverted issue of commingled supply. Cities Service owns the lateral. The gas furnished to the Disciplinary Barracks is measured at the end of the line under an interruptible contract. The gas taken off from the taps on the line is charged to the Army under the Fort Leavenworth firm contract. The paying customers are not affected by prices charged for gas at the Disciplinary Barracks. We therefore may accept *City of Hastings* as controlling as a matter of sound administrative discretion for the purposes of this case, without an acceptance rising "to the dignity of an agency 'policy' " (345 U.S. at 314) applicable under other circumstances of commingled supply.

The Fort Leavenworth Contract and the Controlling Authorities

In *California Electric Power Co.* v. *F.P.C.*, 199 F. 2d 206 (CA9), cert. denied, 345 U.S. 934, reh. denied 345 U.S. 961, referred to and made controlling by Mr. Justice Reed in the case just discussed, the Federal Power Commission order *inter alia* directed California Electric Power Company to charge the Navy only the Commission-filed rates for power supplied for ultimate consumption at the Naval Depot, Hawthorne, Nevada. The presently relevant issue was whether or not the sale to the Navy was "for resale within the intendment of the Act." (199 F. 2d at 209.) The Navy used the power for its various facilities at the Depot, and resold an average of 18.7% to residents of a housing project occupied by Depot employees and business concessions serving such employees. The utility contention that the sales were not for resale was based on (a) the minor percentage resold, (b) the low rate charged by the Navy, (c) lack of reference to resale in the utility–Navy contract, and (d) the want of any intention to deliver power for resale.

The Ninth Circuit held the lack of "express agreement or an intention on the Company's part that the energy shall be resold" immaterial, where the Commission had found actual resales and knowledge thereof. As to the low rates charged by the Navy—equally applicable to billing methods by way of Army estimates involved in the case at bar—"the public interest is involved in the Company's rate to the Navy," rather than "whether the burden of possibly excessive rates were to fall on the ultimate consumers of the energy or on the nation's taxpayers." (199 F. 2d at 209.)

On the broad issue, the court says (199 F. 2d at 209–210)—

> Here, as in the Penn Water case, the supposed nonjurisdictional part of the energy is indistinguishable at the point of sale from the remainder. Moreover the amount resold is not constant, but fluctuating. The Com-

> mission contends that it is not practicable to segregate the jurisdictional part. It seems clear, although petitioner contends otherwise, that the only mode of segregation would be by separating the two loads and supplying each by an independent transmission line from the point of metering and purchase to the Depot. * * * It would create untold difficulty and confusion if petitioner's argument in respect of severability for rate regulation purposes were to be given countenance.

Finally, this case disposes of the Cities Service "*de minimis*" and "dual jurisdiction"[2] contentions by reference to the "Penn Water" case (*Pennsylvania Water and Power Co.* v. *F.P.C.*, 343 U.S. 414, 419–20). In that case, the Supreme Court, dealing with the allegation that about 83% of Pennsylvania generated power was sold by the Pennsylvania utility to Pennsylvania customers, held that the Federal Power Commission had "complete authority to regulate all of this commingled power flow." It is important to note that the Ninth Circuit thus used a case involving the "in interstate commerce" issue as an authoritative disposition of the conventional contentions in connection with the "sale for resale" issue.

Unless viable distinctions, so far not even essayed, can be made between these two issues in the context of the facts presented in the case at bar, *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, disposes of the *de minimis* argument presented by Cities Service. There, the Court first cites the utility's contention and then rules in the following successive portions of the opinion (p. 535–6)—

> that the volume of energy passing over certain of these facilities is insignificant in proportion to the total. Only about one-fifth of one percent of all the energy received and generated by the Company throughout the State of Connecticut was transmitted out of the state during the time of the connection of Fishers Island with the Borough of Groton. Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations. * * * We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved * * *.

The final Cities Service argument about the Fort Leavenworth contract that is worthy of note is the argument that Cities Service did not know about the Army's resales, and did not intend to supply the Army with gas for resale. It should certainly be apparent by this time from the 25-year history of Supreme Court authorities that *scienter* is not the touchstone of Federal regulation. See in an exactly analogous situation involving the "in interstate commerce" issue, *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61, as clarified by the approach taken in the dissenting opinion, pp. 82–84.[3]

Conclusion. Under the authorities, there is a single flow of gas in interstate commerce "for resale for ultimate public consumption for domestic, commercial, industrial, or any other use" within the meaning of Section 1(b) of the Natural Gas Act from Cities Service to the Army and the Army's customers under the Fort Leavenworth contract. This contract must be filed as a rate schedule with the Commission. The price and other provisions of the contract are subject to price and other regulation by the Commission.

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[2] The argument, as stated by Judge Healy, that "the percentage [of power or gas] consumed by the Navy [here, the Army] should be held subject to State regulation, and only the part resold regarded as subject to regulation by the Commission." 199 F. 2d at 209.

[3] Cities Service cites the *Catco* case, 360 U.S. 378, 387–8, to the point that the undertaking of jurisdictional service is a "matter of wholly voluntary choice", and that it did not know of the sales for resale, and has not chosen to make such service. (Br. 27). The *Catco* case observation was made in and is pertinent to a totally different context. In the case at bar, and all other pertinent cases, the deliberate action taken by the utility in hooking up its lines determines its status with regard to Federal regulation.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission, that Cities Service Gas Company shall in accordance with Section 4 of the Natural Gas Act and the applicable portions of Part 154 of the Commission's Regulations under the Natural Gas Act file its contract of May 1, 1958 with the United States Army as a Rate Schedule, and shall in respect of such Rate Schedule comply with all the requirements of the Natural Gas Act and the Commission's Regulations thereunder.

ROBERT M. WESTON,
Presiding Examiner.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXACO INC., DOCKET NO. RI66-333

DECLARATORY ORDER WITH RESPECT TO SECTION 2.56(B)(2) OF THE COMMISSION'S GENERAL POLICY AND INTERPRETATIONS

(Issued April 20, 1966)

Texaco Inc. (Texaco) on March 21, 1966, in connection with some of the proposed rate increases subsequently suspended in the above-entitled proceeding by order issued April 1, 1966,[1] requested clarification of the interpretation of Section 2.56(b)(2) of the Commission's General Policy and Interpretations which relates to settlements under the Second Amendment to the Commission's Statement of General Policy No. 61-1. These proposed increased rates do not reflect the tax reimbursement increases which Texaco by its request for clarification seeks the right to file. Although the original notices of change did reflect such tax reimbursement increases they were revised to exclude them pending Commission action on Texaco's motion. All of the underlying rates herein, except for certain sales under Texaco's Rate Schedule No. 55,[2] are 14.6¢ settlement rates approved by the Commission in accordance with the Second Amendment.

Section 2.56(b)(2) provides in pertinent part:

> For rate schedules from which all price escalation clauses are being eliminated except for periodic escalation provisions as specified below and provisions for future changes in tax reimbursement, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 14.6 cents per Mcf at 14.65 psia, including tax reimbursement: *Provided, however*, that such revised rate schedules may contain escalation clauses providing future separate increases in rate not in excess of one cent per Mcf, * * *

Texaco claims that this section does not purport to limit provisions for future changes in tax reimbursement, and, in fact, specifically exempts such clauses from those required to be eliminated. Texaco therefore contends that under this section it is entitled to file for any tax reimbursement authorized by its contracts in addition to its undisputed right to file for the one cent periodic escalation authorized by such contracts. Texaco argues that if Section

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[1] Texaco's request relates only to its Rate Schedule Nos. 54, 55, 56, 57, 58, 132, 137, 141, 260, 261, and 263.

[2] Since the rate for such sales was not approved under the Second Amendment, they are not involved in the subject issue.

2.56(b)(2) is interpreted as imposing a one cent total increase limitation on its right to file, then the language authorizing rate increases for future changes in tax reimbursement becomes superfluous.

The settlement rates set forth in the Second Amendment are inclusive of tax reimbursement at the existing rates. Similarly, the right to file in the future for one cent increases from time to time has also been interpreted consistently, to be inclusive of any right under the contract to tax reimbursement (except as noted below). The sole purpose in allowing a producer to retain a tax reimbursement provision in its contract is that in the event the State of Texas were to increase the rate of its production tax above 7%,[3] or to impose a new tax on the producer, which it has not done, the producer from a contractual viewpoint would be in a position to file for a rate increase relating to that portion of the tax increase which the buyer had agreed to reimburse it. The producer under the Second Amendment was thus protected against any unforeseen tax increase which might take effect subsequent to the approval of a settlement. The tax increases sought here by Texaco clearly do not fall into this category. Accordingly, we conclude that Texaco has no right at this time under the subject rate schedules to file for tax reimbursement increases in addition to the one cent increases suspended in the above-entitled proceeding.

The Commission orders:

For the reasons set forth above, it is determined that Texaco's interpretation of Section 2.56(b)(2) of the Commission's General Policy and Interpretations as contained in its request for clarification is not correct, and that Texaco is not entitled at this time to file for rates in excess of those now under suspension in Docket No. RI66-333.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UTAH POWER & LIGHT COMPANY, PROJECT NO. 814

ORDER APPROVING REVISED PROJECT EXHIBIT K AND ADJUSTING ANNUAL LAND CHARGES

(Issued April 20, 1966)

On July 1, 1965, as supplemented on December 13, 1965, Utah Power & Light Company, licensee for Project No. 814, filed for Commission approval revised prints of license Exhibit K (FPC No. 814-46) showing the acreage of public and private lands within the project area and the metes and bounds description of the subject area following the reconstruction of the LaBaron Dam, authorized by the Commission in its February 18, 1965, 33 FPC 297, order amending the license for the project. The filings were accompanied by letters authorizing our staff to reflect the revisions on the license Exhibit K. The filings were made pursuant to Article 24 which was included in the license by the February 18, 1965 order.

The project is situated on LaBaron Creek in Beaver County, Utah, and affects lands of the United States within the Fishlake National Forest.

The revised Exhibit K shows that the project area has been reduced by narrowing the margin of land around the LaBaron reservoir. Specifically lands of the United States occupied by the reservoir have been reduced from 41.35 acres to 32.50 acres, with a resultant reduction in the amount of annual charges for the occupancy of such lands by the project.

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[3] The 7% production tax became effective on September 1, 1956, and has remained at that level ever since that time.

The Commission finds:

(1) Exhibit K (FPC No. 814–46), revised by our staff to reflect the reduction in lands of the United States presently occupied by the project, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) The decreased amount of annual charges for recompensing the United States for the occupancy of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) Exhibit K (FPC No. 814–46) entitled "LaBaron Reservoir Dam Reconstruction", as revised, is hereby approved as part of the license for Project No. 814.

(B) Subparagraph B of Article 17 of the license is hereby amended, effective as of January 1, 1966, as follows:

> B. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $204.35.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearings shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF BROOKSVILLE, KENTUCKY AND KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. CP66–152

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 21, 1966)

On November 15, 1965, the City of Brooksville, Kentucky (Applicant) filed in Docket No. CP66–152 an application, as supplemented on December 23, and 29, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Kentucky Gas Transmission Corporation (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in Brooksville, and environs, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant proposes to construct and operate 4.74 miles of 4-inch lateral pipeline from the proposed connection with Respondent's 24-inch transmission line to Brooksville in Bracken County, Kentucky. Applicant will also construct and operate the necessary distribution facilities to provide the proposed service.

Applicant's estimated peak day and annual requirements are:

Year	Mcf	
	Peak day	Annual
1	141	21,830
2	240	37,286
3	253	39,269

The total estimated cost of the proposed project is $160,000, which cost will be financed by revenue bonds issued pursuant to an agreement with the Department of Housing and Urban Development.

On December 13, 1965, Respondent filed an answer to the subject application. Respondent states that service to Applicant will not adversely affect Respondent's gas supply for its existing customers and that Respondent's existing transmission facilities have sufficient capacity to deliver the volumes requested, with no additional construction required other than the interconnection and metering and regulating facilities.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 30, 1965 (30 F.R. 14822). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Kentucky Gas Transmission Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 10, 1956, in Docket No. G–9689 (16 FPC 437).

(2) Applicant, the City of Brooksville, Kentucky, is a municipal corporation incorporated under the laws of the Commonwealth of Kentucky and is legally empowered to construct and operate natural gas facilities and to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell natural gas to Applicant under a service agreement to be executed by Applicant and Respondent, in accordance with the Commission's Regulations, and to deliver up to 253 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant as hereinafter ordered will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Brooksville, Kentucky, and environs, within one year from the date of issuance of this order.

The Commission orders:

(A) Kentucky Gas Transmission Corporation is directed to establish physican connection of its natural gas transportation system with the proposed facilities of Applicant and to sell up to 253 Mcf of natural gas daily to Applicant and to deliver said gas under a service agreement to be executed by Applicant with Respondent, in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate FPC rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

OTTER TAIL POWER COMPANY, DOCKET NO. E-7262

ORDER ACCEPTING SUPPLEMENTAL RATE SCHEDULE FOR FILING AND TERMINATING PROCEEDING

(Issued April 21, 1966)

This order accepts for filing pursuant to Section 205 of the Federal Power Act a proffered rate schedule submittal of Otter Tail Power Company (Otter Tail) Fergus Falls, Minnesota, continuing that Company's wholesale electric service to the Minnesota Valley Cooperative Light and Power Association (Association) Montevideo, Minnesota.

The matter comes before the Commission upon certification of the proposed supplemental rate schedule pursuant to certification of the Presiding Examiner, William C. Levy, dated March 23, 1966. This proceeding was initiated by order of the Commission on December 22, 1965. It is terminated as hereinafter directed.

Otter Tail's proffered rate schedule designated as Supplement No. 3 and Exhibit A to its Rate Schedule FPC No. 104, provides for a continuation of wheeling arrangements under which the Company furnishes power and energy to the Association as a preference customer of the Bureau of Reclamation, United States Department of the Interior; that service to be continued by the Company until the Association is able to receive power and energy through direct interconnection of its electric transmission facilities with those of the Bureau, on or about July 1, 1966. Various transmission facilities of Otter Tail presently interconnect the Association's electric system with Bureau lines.

Our order of December 22, 1965 suspended a notice of cancellation[1] whereby Otter Tail sought to cancel its then filed rate schedule for service to the Association. That schedule is designated as Otter Tail's Rate Schedule FPC No. 104 and Supplement No. 1 thereto.

In continuing Otter Tail's present wheeling service arrangement, the proffered supplement rate schedule provides for the elimination of a facilities charge by the Association to Otter Tail. As previously agreed to between those parties, the Association was entitled to receive annual payments from the Company as of November 1, 1966 and anniversary dates thereafter;[2] that charge being applied to the Association's costs of operating and maintaining approximately 10 miles of 69 kv transmission facilities which are used by the Association in completing the existing delivery arrangements among Otter Tail, Association and the Bureau.[3]

As referred to in the Presiding Examiner's certification to the Commission, neither the Association nor Commission staff oppose Commission acceptance of the proffered supplemental rate schedule filing of Otter Tail and termination of this proceeding. No other interests appeared before the Examiner during the oral hearing sessions held in this matter on February 3 and March 2, 1964.[4]

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[1] Supplement No. 2 to Otter Tail's Rate Schedule FPC No. 104.

[2] Under the prior arrangements between Otter Tail and the Association charges due and payable on November 1, 1966 were to accrue starting November 1, 1965.

[3] Another preference customer of the Bureau, The City of Madison, Minnesota, is currently served by means of a direct interconnection with those facilities of the Association; the power and energy being delivered in the first instance to the Association at Otter Tail's 115/69 kv substation located at Marietta, Minnesota. On or about July 1, 1966, following the direct interconnection of the facilities of the Association and the Bureau, the power and energy requirements of Madison will be supplied through the Association's transmission lines to the exclusion of Otter Tail's facilities.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, and the Commission's Regulations under that Act, that Supplement No. 3 and Exhibit A to Otter Tail's Rate Schedule FPC No. 104 be accepted for filing to become effective as of the date of issuance of this order and the above-entitled proceeding be terminated, all as hereinafter provided.

The Commission orders:

(A) Supplement No. 3 and Exhibit A to Otter Tail's Rate Schedule FPC No. 104 is hereby accepted for filing to become effective as a filed rate schedule of Company as of the date of issuance of this order.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule in question insofar as its effective date is concerned.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such service or rate provided for in the supplemental rate schedule, as above designated, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate. The order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against Otter Tail.

(D) The proceeding initiated by Commission order issued December 22, 1965, in the above-entitled matter is terminated.

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[4] The Association set forth its position in a telegram dated March 1, 1966 directed to the Presiding Examiner and identified as Exhibit A to Supplement No. 3 to Otter Tail's Rate Schedule FPC No. 104.

OPINION NO. 490

ST. MICHAELS UTILITIES COMMISSION AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, E-7117; DELAWARE POWER AND LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, E-7137; CITY OF DOVER, DELAWARE v. DELAWARE POWER AND LIGHT COMPANY, DOCKET NO. E-7175

OPINION AND ORDER AFFIRMING EXAMINER'S DECISION IN PART AND MODIFYING AND REVERSING EXAMINER'S DECISION IN PART

(Issued April 21, 1966)*

Syllabus

1. Delaware Power System's Tariff Customers and the Cooperatives are members of different wholesale classes and rates for the two groups should be ascertained separately. PP. 595, 619.

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* Initial decision appears on p. 603. Opinion No. 490–A and order issued June 15, 1966 denying rehearing, 35 FPC 1027. Affirmed, *St. Michael's Utilities Commission* v. *F.P.C.*, 377 F. 2d 912 (CA4–1967).

2. Cooperatives are plainly distinguishable from Tariff Customers with respect to purpose, sparsity of service areas and technical relationship with Power System. P. 595.
3. Rejecting assertion that Congressional intent in passing Federal Power Act of 1935 was to assure municipalities and cooperatives equal treatment as members of a common class, Commission *notes* that had this been so an express provision bracketing the two groups as one could easily have been incorporated into the Act. P. 596.
4. Since Power System has adequate basis for dividing wholesale customers into separate classes for Tariff Customers and Cooperatives, it is permissible to establish different rates for these groups provided differential is not unreasonable or discriminatory. P. 596.
5. Power System's rates to Cooperatives are just and reasonable. PP. 596; 622.
6. To determine whether Delaware Power's rates to Tariff Customers are just and reasonable, Commission must give primary consideration to relationship of these rates to cost of service evidence; additionally, a comparison of these rates with those charged cooperatives is required to determine whether Power System is being unduly discriminatory. P. 596.
7. Demand data for full twelve months of 1962–63 test period should be utilized in allocating cost of service, particularly since summer of 1962 was abnormally cool. PP. 598; 620.
8. A rate of return of 6 percent is fair and reasonable here. P. 598.
9. Delaware Power System's rates to Tariff Customers are not excessive and fall within acceptable zone of reasonableness. P. 598.
10. Contention that Power System is engaged in a long-range program to stifle competition and create a private monopoly and that its contracts are designed to accomplish this result, has no record support. P. 600.
11. Commission *finds* that Delaware Power System has not unduly discriminated against its Tariff Customers by charging rates excessively higher than those charged Cooperatives. P. 600.
12. In a proceeding under Sections 205 and 206 of the Federal Power Act, Commission *finds* that Power Company has not unlawfully discriminated between customers.

Chairman White *not participating.*

Spencer W. Reeder for St. Michaels Utilities Commission, Commissioners of St. Michaels, Maryland and for the City of Dover, Delaware.

W. Edgar Porter for Stockton Light and Power Company of Maryland and Stockton Light and Power Company of Virginia.

John W. T. Webb, Robert E. May and *Francis H. Caskin* for Delaware Power and Light Company and its subsidiaries, The Eastern Shore Public Service Company of Maryland and The Eastern Shore Public Service Company of Virginia.

William C. Wise, Wilbert Merriken, Ralph Baker and *Baxley Tankard* for the Choptank, Delaware and Accomac-Northampton Electric Cooperatives.

Albert Deen and *Wilson Stringer* for the Public Service Commission of Maryland.

Charles W. Smith for Philadelphia Electric Company and Conowingo Power Company.

Drexel D. Journey, Sandra J. Strebel and *Donald M. Malone* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

This proceeding arises under Sections 205 and 206 of the Federal Power Act and involves the question of whether the rates for electric energy charged by Delaware Power and Light Company (Delaware Power) and its subsidiaries, The Eastern Shore Public Service Company of Maryland (Maryland Eastern Shore), and The Eastern Shore Public Service Company of Virginia (Virginia Eastern Shore), subject to the Commission's jurisdiction, are just and reasonable and not unduly preferential or discriminatory. This proceeding was initiated by complaints filed in July 1963 by the St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland (St. Michaels) in Docket No. E-7114, and by the Stockton Light and Power Company (Stockton) in Docket No. E-7117, alleging that Maryland Eastern Shore was illegally overcharging the complainants, and was discriminating unlawfully against them by granting undue rate preferences to cooperative-owned distribution systems.

The Commission severed the issue of illegal overcharge from that of unlawful discrimination in the St. Michaels Docket No. E-7114, and on May 13, 1964, found that Maryland Eastern Shore had illegally overcharged St. Michaels, and ordered an appropriate rate reduction and refund. See Opinion No. 427, 31 FPC 1161 (1964). Maryland Eastern Shore complied with this order, and made a similar reduction and refund to Stockton.[1]

On the issue of unlawful discrimination, the Commission determined by order dated November 18, 1963, in Docket No. E-7137, 30 FPC 1305, that a general rate investigation of Delaware Power and its subsidiaries (the Delaware Power System) was required, and consolidated with this investigation the complaints of St. Michaels and Stockton. On August 10, 1964, the City of Dover, Delaware (Dover), filed a complaint alleging unlawful discrimination by Delaware Power, and the Commission consolidated Dover's complaint with this proceeding.

Intervention was granted to the following cooperative-owned systems (the Cooperatives): Accomac-Northampton Electric Cooperative (Accomac-Northampton), Choptank Electric Cooperative (Choptank), and Delaware Electric Cooperative (Delaware Cooperative). Intervention was also granted to Philadelphia Electric Company (Philadelphia), Conowingo Power Company (Conowingo), and The Public Service Commission of Maryland (Maryland Commission).

Formal hearings were convened July 20, 1964, before Presiding Examiner Allen C. Lande and were concluded February 9, 1965. On June 1, 1965, Examiner Lande issued an initial decision finding: (1) that the wholesale rates charged by Delaware Power System to the Cooperatives were just and reasonable; (2) that certain Tariff Customers of the Delaware Power System consisting of municipal-owned distribution systems (Municipals), such as St. Michaels, and investor-owned distribution systems (investor-owned), such as Stockton, were not members of the same wholesale rate class as the Cooperatives, and that the rates for the Tariff Customers should be ascertained separately from the rates for the Cooperatives with reference to cost of service and other pertinent evidence; (3) that the rates charged by the Delaware Power System to its Tariff Customers were too high, and should be reduced by about $229,000 annually; and (4) that certain restrictive conditions in the contract between Delaware Power and Dover should be removed or be reconsidered.

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[1] Delaware Power also made reductions and refunds on the same basis to two of its wholesale customers, the City of Dover and the Town of Middletown.

The proceeding is before the Commission on the examiner's decision, exceptions filed by St. Michaels, Stockton, Dover, Delaware Power and its subsidiaries, and by the staff, and on answers to such exceptions filed by the respective parties and by the Cooperatives. The principal issues presented are whether the examiner was correct in determining that the Tariff Customers did not qualify as members of the same wholesale rate class as the Cooperatives, and whether he was correct in ordering a reduction of about $229,000 annually in the rates for the Tariff Customers. Other questions involve (1) the assertion of St. Michaels and Dover that the Delaware Power System is engaged in a program to stifle competition and create a private monopoly; and (2) the allegations by Delaware Power and its subsidiaries that the examiner erred in adopting the staff's computations as to costs, rate base, rate of return, and allocation of costs. The parties argued the matter orally before the Commission on February 8, 1966.

Background

The Delaware Power System provides wholesale and retail electric service for the Delmarva Peninsula, including all of Delaware, nine counties in Maryland on the east side of the Chesapeake Bay, and Accomac and Northampton Counties in Virginia. Service is rendered in Delaware by Delaware Power, in Maryland by Maryland Eastern Shore, and in Virginia by Virginia Eastern Shore. The three companies treat their system as if it were a single company with respect to operation and planning, and operate a completely integrated electric system in the three states. Delaware Power participates in the Pennsylvania-New Jersey-Maryland Pool, and is connected with Philadelphia Electric Company, Conowingo Power Company, and Atlantic City Electric Company.

The Delaware Power System sells at wholesale to the following distributors: ten Municipals, including Dover and St. Michaels;[2] two investor-owned companies, Stockton and Chestertown Electric Light and Power Company; and three Cooperatives, Delaware Cooperative, Choptank, and Accomac-Northampton. Total purchases of these wholesale customers approximated 350,066,556 kwh a year, with total revenues during a 1962-1963 test period of $3,851,544. Wholesale electric sales during the test period constituted 8.5 percent of total system electric revenues.

The Delaware Power System divides its wholesale purchasers into two rate groups: (1) Tariff Customers, consisting of Municipals and investor-owned companies; and (2) Cooperatives. The Cooperatives are billed under identical schedules at substantially lower rates than the Tariff Customers. According to Delaware Power the computed average rate paid by the Cooperatives during the twelve-month period ending June 30, 1963 was 9.7 mills per kwh as compared with a computed average rate of 11.9 mills paid by the Tariff Customers. The City of Dover purchases energy from Delaware Power under three separate rates.

The Delaware Power System reduced its rates to the Cooperatives by approximately $200,000 annually effective February 1, 1963, because it was confronted with the Cooperatives' proposal to construct competitive generating and transmission facilities. The Delaware Power System later reduced its rates to its Tariff Customers by an estimated $300,000 annually effective May

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[2] The other eight Municipals are Middletown, Lewes, Clayton, Milford, Smyrna, Newark, New Castle, and Centreville.

1, 1963. The complainants, St. Michaels, Dover, and Stockton all contend that this reduction is inadequate, and that the Tariff Customers should be given further rate reductions which would eliminate any existing preferential rate treatment accorded the Cooperatives.

Section 205 of the Federal Power Act requires that we determine: (a) whether the rates and charges made and received by the Delaware Power System in connection with the transmission or sale of electric energy subject to our jurisdiction are just and reasonable; and (b) whether, with respect to any such transmission or sale, the Delaware Power System is making or granting any undue preference or advantage to any person or subjecting any person to undue prejudice or disadvantage, or is maintaining any unreasonable difference in rates, or in other respects, either as between localities or as between classes of service. In connection with the question of rate discrimination, we pointed out in *Southwestern Public Service Company*, Docket No. E-7038, Opinion No. 451, March 2, 1965, 33 FPC 343 at 346, that "not all differences in rates are prohibited by Section 205, but only those which are unreasonable and which result in undue prejudice or disadvantage, and that differences in rates as between appropriately classified customers are consistent with Section 205 and represent the usual practice in the industry." The first question we therefore shall consider is whether or not Delaware Power's classification of its wholesale customers into two separate groups is appropriate.

Separate Classification of Cooperatives and Tariff Customers

The examiner, relying upon *Southwestern Public Service Company, supra*, held that the evidence of record supported a finding that the Tariff Customers and the Cooperatives are members of different wholesale classes, and he concluded that the rates for these two groups should be ascertained separately. We affirm the examiner's conclusions on these points.

Although the complainants have urged that the Tariff Customers should be considered as members of the same wholesale rate class as the Cooperatives because of alleged similarities in their technical requirements, rural operations, and sales and load percentages, we find that the record shows that the Cooperatives are plainly distinguishable from the Tariff Customers with respect to purpose, sparsity of service areas, and technical relationship with the Delaware Power System.

The Cooperatives, unlike the Tariff Customers, were established by farmers to obtain electric service which they were unable to secure from investor-owned or municipal-owned utilities, and they now provide complete area service in sparsely occupied areas in conformity with the Rural Electrification Act. The Cooperatives constructed hundreds and even thousands of miles of line to serve a relatively small group of customers. They have an average density of only 5 customers per mile of distribution line, as compared with a density of 57.48 customers per mile for Dover, 37.75 customers per mile for St. Michaels, and 12.31 customers per mile for Stockton. The Cooperatives' average investment in distribution plant per customer is $574.85; that of St. Michaels and Stockton is $238.78.[3] The Cooperatives have special problems in that their lines extend over hundreds of miles of difficult terrain, and in that a substantial number of their consumer connections either represent idle services, or are used by seasonal or mobile customers.

Further, because the Cooperatives were organized after the basic lines of the Delaware Power System were laid out, the Cooperatives had to build transmission lines from their load centers to points on the Delaware Power System, whereas the System makes delivery directly to the load centers of most of its Tariff Customers. The Cooperatives thus have more than one-third of a million dollars invested in transmission lines; the Tariff Customers have very little. The Cooperatives provide their own substations, and are required to take service with voltage at 23 kv, 69 kv or "such intermediate voltage as may be standard." In the case of the Tariff Customers, the Delaware Power System normally furnishes the substations, and makes its service available at a voltage mutually agreed upon with the customer. In addition, the Cooperatives as a group (with some variation in the case of Accoma-Northampton) have load characteristics which differ from those of most of the Tariff Customers in that the Cooperatives require less of their peak power demand coincidentally with the total system peak than do most of the Tariff Customers.

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[3] Despite staff's arguments to the contrary, we think these figures are adequate to show that the Cooperatives have relatively higher costs than the Tariff Customers.

Finally, we have considered the assertion of the Municipals that it was the Congressional intent in passing the Federal Power Act of 1935 to assure municipalities and cooperatives equal treatment under the Act as members of a common class. Support for this assertion, however, cannot be found in any of the explicit provisions of the Act. Plainly, had it been the intention of Congress to treat municipals and cooperatives as members of the same class, an express provision bracketing the two groups into one could easily have been incorporated into the Act. This was not done.

Reasonableness of Delaware Power's Wholesale Rates

In light of our finding that the Delaware Power System has an adequate basis for dividing its wholesale customers into separate classes for the Tariff Customers and for the Cooperatives, it follows that it is permissible for the System to establish different rates for these respective groups, provided that the differential is not unreasonable nor discriminatory. *Southwestern Public Service Company, supra.* Also see the second *Otter Tail Company* case, 8 FPC 393 (1949).

Delaware Power's rates to the Cooperatives were not challenged by any party to this proceeding, and no exception was filed to the examiner's finding that these rates are just and reasonable. Staff estimated that these rates yield the Delaware Power System a return of 4.07 percent on its service to the Cooperatives. Delaware Power and the Cooperatives claimed that according to their cost studies the return is approximately 4.91 percent. On the basis of certain rulings made by the examiner with respect to cost items and allocations of costs, it appears that a return of 4.79 percent could be established for the System's sales to the Cooperatives. In any event, no matter which computation is adopted, it is apparent that these rates adequately cover Delaware Power's costs of providing service to the Cooperatives, and yield Delaware Power a return which not only exceeds the 3.275 percent cost of Delaware Power's senior capital, but is also higher than 3.7 percent return which we approved as reasonable in the *Southwestern* case. We accordingly affirm the examiner's finding as to the reasonableness of these rates.

With respect to Delaware Power's rates to the Tariff Customers, it is our position that in arriving at a determination as to whether these rates are just and reasonable, we must give primary consideration to the relationship of these rates to cost of service evidence. See *South Carolina Generating Company* v. *Federal Power Commission* 261 F. 2d 915, 920 (CA4–1958). In addition, a comparison of these rates with those charged the Cooperatives is required in order to enable a determination to be made as to whether the Delaware Power System is being unduly discriminatory. Compare *Federal Power Commission* v. *Sierra Pacific Power Company,* 350 U.S. 348, 355 (1956).

Cost of service evidence was offered in these proceedings by the Delaware Power System, by the Cooperatives, and by the Commission's staff. The Cooperatives used the staff's studies, but adopted Delaware Power's allocation method and made certain adjustments to specific costs to reflect their own views. Both staff and Delaware Power prepared system-wide or rolled-in cost of service studies, using for the base period the 12-months ended June 30, 1963. According to staff's computations, the rates charged the Tariff Customers yielded the Delaware Power System a return of 6.41 percent. Delaware Power. on the other hand, contended that its rate of return on this service was only 5.34 percent, when computed according to Delaware Power's claimed costs during the base period. The Cooperatives' figures reflected 5.56 and 5.75 percent, depending on the federal income tax rate employed.

The different percentage returns arrived at by staff, Delaware Power and by the Cooperatives are the result of different approaches in allocating the cost of service, and of disagreement as to the specific treatment of wage increases, rate case expense, rate of return, income tax rates, and depreciation.

The most significant disagreement between staff, on the one hand, and Delaware Power and the Cooperatives, on the other, relates to the allocation of capacity costs of generation and high voltage transmission. Delaware Power used an allocation based 50 percent on coincidental and 50 percent on noncoincidental peak demands, asserting that the Cooperatives imposed their highest loads consistently at a time when the rest of the system load was less than its maximum, and that it was less expensive for Delaware Power to handle the Cooperatives' peak demand than that of the Tariff Customers. The Cooperatives also used demand allocation factors based on the average of the coincident and non-coincident peaks divided by the total system peaks. Staff, however, used only non-coincidental demands for allocating costs, and explained that in adopting the system-wide cost method it had diluted the higher costs for providing service in the areas where the Cooperatives were located with the lower costs of the urban areas served by Delaware Power's Northern Division. Staff stated that it would be improper to assign more costs to Tariff Customers by allocating to them the higher costs obtained from the coincident demand method.

Staff utilized the demand data for only the first nine months of the 1962–1963 test period in allocating the total cost of service, and did not use the data for the months of April, May and June 1963. Delaware Power urged that the full twelve-month period should be used, stating that the summer of 1962 was abnormally cool and did not reflect the usual summer peak load, and that the test period peak was reached in June 1963 with 489.4 megawatts, whereas the peak in the nine-month span used by staff was only 433.7 megawatts. Delaware Power recommended that the coincidental demand data of its wholesale customers for the years 1961, 1962, and 1963 should also be considered.

The examiner found that staff's method assigned $129,053 more cost to the Cooperatives and $101,338 less cost to the Tariff Customers than did Delaware Power's method. Utilizing staff's other cost data, Delaware Power's allocation method would show a rate of return on sales to Tariff Customers of only 5.81 percent as contrasted with staff's computation of 6.41 percent. The examiner ruled in favor of Delaware Power's method finding that the record showed that the Cooperatives' load pattern was such that their maximum peak did not coincide with that of the total system, whereas the maximum peak of the Municipals was practically coincident with that of the system as a whole. The examiner found that it was entirely reasonable for Delaware Power to reflect in its rates to the two classes of customers the lower costs involved in supplying service to those customers whose peak load was not coincident with that of the system as a whole, and that Delaware Power's position was clearly within the accepted general practice of public utilities in granting preferential pricing to a class of customers who contributed less, percentagewise, to the system peak than they do to the non-coincidental peak. The examiner also found that staff was incorrect in limiting its allocation data to only the first nine months of the 1962–1963 test period, stating that staff had disregarded material relevant to the test period and as a consequence had understated costs to the Municipal Customers.

We are in general agreement with the examiner's conclusion that Delaware Power's investment in generation and high voltage facilities was prompted in large part by its estimates of the maximum requirements of its customers during periods of system peaks. In this connection we find that the record is inconclusive regarding other factors which may significantly influence investment, such as maintenance schedules, load growth in the areas served and the power pooling relationships involved.[4] Further, although the record indicates that the impact of staff's use of the nine-month test period did not substantially affect the final percentage results, we agree with the examiner that the demand data for the full twelve months of the 1962–1963 test period should be utilized in allocating the total cost of service, particularly since the summer of 1962 was an abnormally cool one.

We have compared the results obtained by Delaware Power's method of allocation with other recognized allocation methods, and on the basis of staff's cost of service, we have ascertained that Delaware Power will show a rate of return on its service to the Tariff Customers of 5.74 percent under the peak hour responsibility method, of 5.87 percent under a twelve-month average peak responsibility method, and of 6.07 percent under the average and excess demand method. We find on the record in this proceeding that a rate of return of 6 percent is fair and reasonable. Accordingly, we conclude that the rates of the Delaware Power System to its Tariff Customers, when considered in relationship to the cost of service data submitted by staff, which is most adverse to the Company, are not excessive and fall within the acceptable zone of reasonableness. See *Southwestern Public Service Company*, Opinion No. 451, March 2, 1965, *supra; Wisconsin Michigan Power Company*, 31 FPC 1445 (1964).

Question of Undue Discrimination

There remains for consideration the question whether Delaware Power's rates to the Tariff Customers, even though reasonable in relation to its cost of service, are nevertheless unduly discriminatory on the basis of a comparison with the rates charged the Cooperatives.

Delaware Power has stated that the computed average rate paid by the Cooperatives during the twelve-month period ending June 30, 1963, was 9.7 mills per kwh as against a computed average rate of 11.9 mills paid by the Tariff Customers. The record shows that the average kwh costs of the smaller Tariff Customers, such as St. Michaels and Stockton, are higher than the group average because of the inability of these smaller customers to take advantage of the tariff discounts for large volume purchases. In great measure the difference in rate structure between the Cooperatives and the Tariff Customers can be accounted for by the actual difference to the Delaware Power System in the costs of serving these two wholesale groups. Thus, Delaware Power's rate of return on its service to the Tariff Customers exceeds its rate of return on its service to the Cooperatives by only 0.89 percent, when computed on the basis of staff's cost of service data, adjusted by the examiner's cost of service and allocation findings.[5] In addition, as the record plainly shows, the lower rates charged the Cooperatives can be attributed to the superior bargaining power which the Cooperatives have demonstrated in their negotiations with the Delaware Power System by reason of their apparent ability to build their own generating and transmission system. We have given weight to this bargaining power in *Southwestern Public Service Company*, Opinion No. 451 (1965).

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[4] We anticipate that future proceedings will explore more fully the many factors influencing investment so the Commission can better evaluate the various methods of cost allocation.

It is also appropriate to point out that the Tariff Customers have directly benefited from the Cooperatives' ability to negotiate lower rate schedules, since in this matter Delaware Power's rate reduction to the Cooperatives was followed by a substantially similar rate reduction to the Tariff Customers. Moreover, the evidence is persuasive that if Delaware Power is not permitted to continue to supply the Cooperatives with their energy requirements at the rates which have been agreed upon between them, the Cooperatives would then undertake the construction of generation and transmission facilities with funds borrowed by them from the REA. The resulting duplication of facilities would be detrimental to all of Delaware Power's customers. While the Municipals object to the recognition of the Cooperatives' bargaining power as a factor in determining the discrimination issue here, we recognize that this very factor could be advanced to justify rate preferentials granted to other municipal owned distribution systems.

Although the Tariff Customers have alleged that they have been harmed competitively by the differential in the rates charged them and the Cooperatives, the record shows and the examiner so found that there is no competition between the Cooperatives and any of the Tariff Customers. Officers and managers of the Cooperatives have testified that the Cooperatives have never taken or attempted to take any existing or prospective customers from the Tariff Customers, except in a few instances where the ultimate consumers had been offered to the Cooperatives by the Tariff Customers. This testimony was corroborated by witnesses for the Tariff Customers. Further, the record does not show that the Tariff Customers have been significantly impaired in their ability to obtain new customers by reason of this rate differential.

We have considered the specific instances in which the City of Dover has alleged that it was unable to obtain certain large industrial or commercial new accounts because its power rates were not competitive. However, it does not appear that in these instances Dover lost these accounts to a competing Cooperative, but rather that some of the accounts preferred a direct connection with the Delaware Power System, or else preferred a different type of heat or power supply. We have also considered the complaint of St. Michaels that it is threatened with the loss of certain wholesale business which it has been supplying as a middleman to Choptank Electric Cooperative, because the extension of the lines of the Delaware Power System now makes it possible for Choptank to buy directly from Maryland Eastern Shore rather than through St. Michaels. Choptank's desire in this case to purchase directly from the Delaware Power System and not through a middleman poses a *Shrewsbury* situation,[6] and it does not appear that any reduction of the rate differential now existing between the Tariff Customers and the Cooperatives will alleviate this situation so long as St. Michaels' markup of about 4.0 mills per kwh over its own costs exceeds the mill per kwh cost which Choptank will sustain by making a direct connection.

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[5] The rate of return as computed according to these adjustments is 4.79 percent for the Cooperatives and 5.68 percent for the Tariff Customers. On the basis of a twelve-month average peak responsibility allocation, and using staff's cost of service data, the rate of return works out to 5.33 percent for the Cooperatives and 5.87 percent for the Tariff Customers.

[6] *Shrewsbury Municipal Light Department* v. *New England Power Company*, 32 FPC 373 (1964), affirmed in *New England Power Company* v. *Federal Power Commission*, 349 F. 2d 258 (CA1–1965).

The complaints of Stockton with respect to its inferior competitive position are not substantiated by any showing of a loss of existing or prospective consumers to its Cooperative neighbors. Furthermore, the operations of Stockton are so much smaller than those of the Cooperatives,[7] as to indicate that Stockton's relatively higher average charges are due essentially to the small scale of its purchases rather than to its classification as a Tariff Customer.[8]

The complainants have urged that the Delaware Power System is engaged in a long-range program to stifle competition and create a private monopoly, and that its contracts with the Cooperatives and with the Tariff Customers are all designed to accomplish this result. We find no support for this contention in the record. To the contrary, we find instances where Delaware Power cooperated with the City of Dover in making energy available to large industrial and large military installations served by the City. Moreover, the Delaware Power System followed the rate reduction of approximately $200,000 per year which it made to the Cooperatives effective February 1, 1963, with a rate reduction aggregating approximately $300,000 per year to the Tariff Customers effective May 1, 1963. Delaware Power is making energy available to the City of Dover at a price far lower than Dover's own cost for the energy which it generates itself.[9] Further, the rates which Delaware Power has charged the Tariff Customers have enabled Stockton, St. Michaels, and Dover to reap at least satisfactory margin of revenues over costs from their distribution operations, with a rate of return of from 12 to 15 percent for Stockton, and of 12 percent for St. Michaels.

At the oral argument the complainants offered in evidence charts showing that the rates charged by the Delaware Power System to its small Tariff Customers exceeded Delaware Power's rates for direct sales to its own industrial and other large consumers. Apart from the untimeliness of this proffer, it does not appear that any proper groundwork for this showing was laid by the complainants.

We accordingly find that the record in this proceeding does not support the charge that the Delaware Power System has unduly discriminated against its Tariff Customers by charging them rates which are excessively higher than those charged the Cooperatives. We further find, contrary to the examiner's holding, that any general narrowing of the differential between the rates charged the Tariff Customers and those charged the Cooperatives is not at this time required.

Other Issues

Apart from the discrimination and rate level questions, the following issues remain regarding the propriety of certain features of Delaware Power's rate schedules applicable to Dover:

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[7] According to information submitted by the Cooperatives, Stockton serves only 862 consumers, whereas Delaware Electric Cooperative serves 10,530, Choptank Electric Cooperative serves 13,424, and Accomac-Northampton Electric Cooperative serves 5,113.

[8] Stockton's average rate of 13.93 mills per kwh contrasts with the comparatively low average rate of 11.59 mills per kwh charged another investor-owned customer, Chestertown Electric Light & Power Co., whose purchases from the Delaware Power System are substantially larger than Stockton's.

[9] A witness for Dover testified at the hearings that the energy which Dover purchased from Delaware Power averaged out at a cost of 12.437 mills per kwh, whereas the energy which it generated itself cost 19.797 mills per kwh (computed on the basis of unit production expense of 11.308 mills plus unit debt service of 8.489 mills).

(1) The provision in Article XV of Rate Schedule FPC No. 31 which requires Dover to retain and maintain certain facilities solely for the use of the General Foods Plant if Dover elects to purchase these facilities.

(2) The provision in Rate Schedule FPC No. 32 upon which sales to Dover do not reflect the reserve capacity presently provided by Dover.

(3) The provision in Rate Schedule FPC Nos. 28 and 31 which prohibits Dover from operating the facilities used in making the sale to Dover Air Base in parallel with the remainder of its system.

We have reviewed the examiner's decision on these issues in the light of the exceptions and approve and adopt his findings. However, with respect to item 2, we shall also order Delaware to file an appropriate change to its rate schedule consistent with our opinion.

We also adopt the examiner's decision dealing with the power supply agreements involving Delaware Power and the proper method of computing the tax factor percentage used in the Power Supply Agreement.[10] No exception was taken to his findings on these issues.

This leaves one final issue. The Delaware Power System's wholesale rate schedules contain a fuel adjustment clause which changes the energy price according to changes in the price of coal at the System's steam plants at Edge Moor, Indian River and Vienna. During the test period, 20 percent of the total system energy was produced by Unit No. Three of the Delaware City Steam Plant, which is devoted entirely to production of energy for general system use. This plant is not included in the list of plants which determine the cost of fuel for purposes of fuel clause application and staff excepted to its exclusion. Delaware Power said that this is immaterial because the cost of fuel for all three units of the plant is based upon Delaware's system average cost of fuel. Thus, according to Delaware Power, inclusion of this plant would not affect rates. However, it is our understanding that the fuel adjustment factor for the plant is not based on the fuel costs of all other plants on the system, but only certain ones. Thus, inclusion of this plant could make a difference and we shall order its inclusion in the fuel adjustment clause. Even if Delaware Power is correct in its position, inclusion of this plant could not prejudice it.

The Commission further finds that:

(1) Delaware Power and Light Company, a corporation organized and existing pursuant to the laws of the State of Delaware, The Eastern Shore Public Service Company of Maryland, a corporation organized and existing pursuant to the laws of the State of Maryland, and The Eastern Shore Public Service Company of Virginia, a corporation organized and existing pursuant to the laws of the State of Virginia, own and operate facilities, among others, for the transmission and sale at wholesale of electric energy transmitted from points of generation in the States of Delaware, Maryland and Virginia, among others, to points of consumption outside the State in which it is generated, which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Delaware Power and Light Company, The Eastern Shore Public Service Company of Maryland and The Eastern Shore Public Service Company of Virginia are, therefore, public utilities within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission.

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[10] Examiner's Initial Decision, pp. 625, 626.

(2) Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore (collectively known as the Delaware Power System), in making each of the sales of electric energy at wholesale under the rate schedules referred to in the Commission's order issued November 18, 1963, as amended, transmit and sell electric energy at wholesale in interstate commerce for resale within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(3) The Tariff Customers of the Delaware Power System constitute a class of wholesale purchasers separate and distinct from the Cooperative Customers.

(4) A reasonable rate of return for use in the determination of the Delaware Power System's cost of service for the period adopted as the test year in this proceeding is 6 percent per annum.

(5) The rates and charges made, demanded and received by Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore for and in connection with the transmission and sale of electric energy transmitted, sold and delivered to the Cooperative Customers under and pursuant to the rate schedules referred to in the Commission's order of November 18, 1963, as amended, are just, reasonable and lawful; and the disparity between such rates and those hereinafter found to be just and reasonable for the services which the Delaware Power System renders to its Tariff Customers under the rate schedules referred to in the Commission's order of November 18, 1963, as amended, is not unreasonable and does not subject any person to undue prejudice or disadvantage within the meaning of Section 205(b) of the Federal Power Act.

(6) The rates and charges made, demanded and received by Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore for and in connection with the transmission and sale of electric energy transmitted, sold and delivered by these companies to the Tariff Customers under and pursuant to the rate schedules referred to in the Commission's order of November 18, 1963, as amended, are except as specifically modified below, just, reasonable and lawful.

(7) The evidence of record does not support the allegation of the Tariff Customers that the Delaware Power System is engaged in a long-range program to stifle competition and create a private monopoly.

(8) The provision in Article XV of Delaware Power's Rate Schedule FPC No. 31 with the City of Dover, requiring Dover to retain and maintain solely for the use of the General Foods plant certain facilities of Delaware Power in the event Dover elects to purchase such facilities, is unduly restrictive and should be deleted from the Schedule.

(9) Delaware Power should reconsider Rate Schedule FPC No. 32 as applicable to standby service to the City of Dover in light of current circumstances, and should report to the Commission for approval properly adjusted charges before they are submitted for filing as a rate change.

(10) Dover's complaint alleging undue restriction by Delaware Power of parallel operations in Rate Schedules FPC Nos. 28 and 31 should be dismissed without prejudice.

(11) Delaware City Steam Plant Unit No. Three should be included in the list of plants of the Delaware Power System which determine the cost of fuel for purposes of fuel clause application in the Delaware Power System's wholesale rate schedules.

(12) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) The complaints of St. Michaels in Docket No. E-7114 and of Stockton in Docket No. E-7117, alleging unlawful discrimination in the rates charged by the Delaware Power System, are dismissed.

(B) With respect to the complaint of Dover against Delaware Power in Docket No. E-7175, it is ordered:

(1) Delaware Power shall delete the provision in Article XV of its Rate Schedule FPC No. 31 requiring Dover to retain and maintain solely for the use of the General Foods plant certain facilities of Delaware Power in the event Dover elects to purchase such facilities.

(2) Delaware Power shall reconsider Rate Schedule FPC No. 32 as applicable to standby service to Dover in light of current circumstances, and shall report to the Commission for approval of properly adjusted charges before they are submitted for filing as a rate change, or if no adjustments are deemed appropriate, Delaware Power shall submit to the Commission data supporting such conclusion.

(3) The complaint of Dover alleging undue restriction by Delaware Power to parallel operations in Rate Schedules FPC Nos. 28 and 31 is dismissed without prejudice.

(4) In all other respects the complaint of Dover alleging unlawful discrimination in the rates charged by Delaware Power is dismissed.

(C) The Delaware Power System shall include its Delaware City Steam Plant Unit No. Three in the list of plants which determine the cost of fuel for purposes of fuel clause application in its wholesale rate schedules.

(D) The Power Supply Agreement, Delaware Power's Rate Schedule FPC No. 33 and Supplement, shall be modified to reflect the prior finding in this opinion and order approving the staff's method of computation based on a six percent rate of return and cost of service determination reflecting the associated taxes.

(E) Upon compliance by the Delaware Power System with all provisions as set forth above, the rate schedules and supplements thereto referred to above shall be determined to have been found just, reasonable, and not unduly discriminatory or preferential or otherwise unlawful within the meaning of the Federal Power Act, and thereafter this proceeding shall be terminated.

(F) The examiner's decision issued June 1, 1965, herein to the extent consistent herewith, is adopted as part of this opinion and order.

(G) Exceptions not granted herein are denied.

Chairman White *not participating.*

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON COMPLAINTS ABOUT LEVEL OF WHOLESALE RATES FOR ELECTRICITY

(Issued June 1, 1965)

LANDE, *Presiding Examiner:* This proceeding arises under Sections 205 and 206 of the Federal Power Act and involves the question whether the rates charged by Delaware Power and Light Company and its subsidiary companies (Delaware Power or Respondents) which are subject to the jurisdiction of the Federal Power Commission, are just and reasonable and not unduly preferential or discriminatory. As will be detailed in the next chapter, certain Municipal Customers (Tariff Customers or Complainants), accounting for about five percent of Delaware Power's revenues, seek a reduction in their wholesale rates to a level of charges to Cooperatives who allegedly belong to the same rate class of wholesale customers. It appears that in order to discourage the construction of new generating facilities Delaware Power reduced the rates for the Cooperatives to a level covering the cost of service and yielding only about ⅔ of the system's overall rate of return. The principal issue is whether the Municipal Customers are entitled to the same rate reduction, because they allegedly possess sufficient economic, technical and social characteristics to qualify for rates of the same "class of customers" under Section 205 of the Act.

Should it be found that the Municipal Electric Customers do possess many but not sufficient characteristics to qualify for the Cooperative Customers rate class, what would be a "reasonable difference" in their respective electric rates. In other words, what is the "just and reasonable" electric rate for the Municipal Customers under Section 206 of the Act.

PROCEDURAL DEVELOPMENTS

On July 12, 1963, the St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland (St. Michaels) filed a formal complaint against the Eastern Shore Public Service Company of Maryland (Maryland Company), a subsidiary of Delaware Power and Light Company, which was assigned Docket No. E-7114. This complaint alleged that the Maryland Company had "illegally overcharged" St. Michaels for sales of electric energy on and after May 1, 1963. The complaint also charged the Maryland Company with "unlawful discrimination."

By its order issued October 25, 1963, the Commission granted St. Michaels' motion to sever issues, directed that a hearing be held upon the "illegal overcharge" of unlawful discrimination. Pursuant to this order a hearing was held on November 18, 1963. Thereafter, the Commission, by its Opinion No. 427 and order issued May 13, 1964, 31 FPC 1161, sustained St. Michaels' allegation of "illegal overcharge" and required rate reductions and refunds to be made by the Maryland Company. The Maryland Company complied with the provisions of the Commission's order. Thereafter, similar reductions and refunds were made by the Maryland Company to Stockton Light and Power Company. Moreover, Delaware Power also made reductions and refunds on the same basis to two of its Delaware wholesale customers, the City of Dover, and the town of Middletown.

The complaint of Stockton Light and Power Company (Stockton) against the Maryland Company, filed on July 25, 1963, and assigned Docket No. E-7117, contained substantially the same allegations as the complaint filed by St. Michaels.

After the filing of the complaints by St. Michaels and Stockton, the Commission, by its order issued November 18, 1963, 30 FPC 1305, instituted a general rate investigation of the Delaware Power and Light Company, and its two subsidiaries, The Eastern Shore Public Service Company of Maryland and The Eastern Shore Public Service Company of Virginia, in Docket No. E-7137, consolidated this investigation proceeding with the complaint cases in Docket Nos. E-7114 and E-7117. The Commission order directed that a general investigation and hearing be held pursuant to Sections 205 and 206 concerning the lawfulness of all the wholesale electric rates and charges of Delaware Power on file with the Commission, including Delaware Power's Rate Schedule FPC Nos. 2, 8, 12, 17, 19, 22, 23, 28, 29, and 31, and FPC Electric Tariff Resale Service Schedule No. 1, Maryland Eastern Shore Rate Schedule Nos. 2, 4, 7, and 8, FPC Electric Power Tariff Resale Service Schedule No. 1, and Virginia Eastern Shore Rate Schedule FPC Nos. 2 and 4.

Intervention was granted to Accomac-Northampton Electric Cooperative, Choptank Electric Cooperative, and Delaware Electric Cooperative (Cooperatives), and to Philadelphia Electric Company and Conowingo Power Company.

The initial prehearing conference was held on January 15, 1964. At that time, the Commission's Staff had not completed its field investigation, nor had the companies as yet undertaken a cost of service study. Accordingly, various procedural dates have been set. The complaint of the City of Dover, Delaware, against Delaware Power, which was assigned Docket No. E-7175, was filed on August 10, 1964. Dover complained of certain contract provisions and of alleged unlawful discrimination. The Dover complaint was consolidated with the other cases by Commission order issued August 26, 1964.

The hearing sessions before the Examiner were continued several times in order to allow the parties to revise exhibits and to prepare rebuttal testimony. The hearing lasted 28 days, and was concluded on February 9, 1965. The hearing record, including the testimony and cross-examination of 21 witnesses, consists of 21 volumes, 3820 pages of transcript, 96 exhibits, and 21 items by reference. Opening briefs were duly filed by the Staff, St. Michaels, Dover, Stockton, Delaware Power, and the Cooperatives. Reply briefs were received on May 10, 1965.

THE ISSUES

The principal issues can be stated as follows:

(a) Are Delaware Power's wholesale electric rates applicable to the Cooperatives "just and reasonable," though they yield less profit than the other services of the system.

(b) If said rates are proper, must they also be applied to all Municipal Tariff Customers. In other words, are the Cooperatives and Municipal Customers members of the same rate class.

(c) If not, how close to the Cooperative electric rate level must the rates applicable to the Municipal Customers be in order to constitute "just and reasonable" rates.

(d) Subsidiary issues include proper classification of wholesale services, allocation of costs, treatment of deferred taxes and Federal income taxes.

STATEMENT OF FACTS

Delaware Power's wholesale rate schedules in issue here are on file with the Commission pursuant to Section 205 of the Act and Part 35 of the Commission's Regulations under the Act, 18 CFR Part 35.

The Commission's jurisdiction over the wholesale rates of Delaware Power was not contested by the parties herein. Furthermore, the parties concede that the wholesale rates applicable to the Cooperatives are lower than the wholesale rates to St. Michaels, Dover and Stockton. The controversy is whether these wholesale rates may properly be tested on a comparative sale basis; on a value of service basis, or, if the rates are to be tested on a cost of service basis, is it just and reasonable to allow a higher rate of return for service to Municipal Customers than for service to Cooperatives. Competitive considerations are paramount in this controversy. This makes it necessary to detail the individual technical and economic features of the various companies so that the alleged "undue discrimination" aspects can be weighed properly.

Operations of Delaware Power

Staff Counsel's comprehensive presentation shows that Delaware Power provides wholesale and retail electric service in the State of Delaware and portions of Maryland and Virginia. The service area of the combined electric system extends from the northern extremity of the State of Delaware through the State of Maryland and to the southern tip of the Delmarva Peninsula in Virginia. The area includes the entire State of Delaware; nine counties in Maryland on the east side of the Chesapeake Bay; and Accomac and Northampton Counties in Virginia. The electric service is rendered in Delaware by Delaware Power, in Maryland by Maryland Eastern Shore and in Virginia by Virginia Eastern Shore. Delaware Power also provides gas utility service in and around Wilmington, Delaware. Delaware Power's intrastate operations are subject to the regulatory jurisdictions of the Delaware Public Service Commission, the Public Service Commission of Maryland and the Virginia Corporation Commission.

Delaware Power is connected with Philadelphia's system in the north by three 69 kv lines with a total capacity of 230 mw, and it is connected in the east with Atlantic City Electric Company (New Jersey) by means of submarine cables crossing the Delaware River. In addition, Delaware Power transfers power through its system for Philadelphia to Conowingo at three locations on the Maryland-Delaware boundary, and also has an agreement with Conowingo for exchange of energy. Through the Philadelphia and Atlantic City connections, by means of an agreement with Philadelphia, Delaware Power participates in the Pennsylvania-New Jersey-Maryland Pool. The system operates its generating plants in full cooperation with the PJM Pool and considerable interchange of economy energy flows through both the northern and eastern interconnections, all of which is accounted for under the agreement with Philadelphia.

Delaware Power is connected at numerous points to the south and west with Maryland Eastern Shore. The electric facilities of Maryland Eastern Shore are connected in the south with Virginia Eastern Shore. The three companies treat their systems as if it were a single company, with respect to both operation and planning, and operate a completely integrated electric system in the three-state service area. Hour by hour dispatching of generation for the entire system is handled in Wilmington.

The major generating stations are located in Delaware and consist of the Edge Moor plant, located just outside of Wilmington. Indian River plant is located in southern Delaware; Delaware City plant is located a few miles south of Wilmington.

Maryland Eastern Shore owns and operates the 87 mw Vienna plant consisting of a number of smaller units of which the most recent is a 30 mw unit installed in 1951. Diesel units with a capacity of 3 mw owned by the town of Centreville are available to and operated at the request of Maryland Eastern Shore. Virginia Eastern Shore owns and operates a 10 mw diesel plant placed in service at the southern tip of the Delmarva Peninsula. Also available are 2 mw of diesel generating capacity owned by Accomac-Northampton and operated at the request of Virginia Eastern Shore.

The next major unit planned on the system is the fourth generating unit at the Edge Moor Power Station. This 167 mw unit will add about 25% to the aggregate electric generating capacity in 1966.

These generating sources are interconnected by a major 138 kv line and several parallel 69 kv transmission lines. The 69 kv system extends from the northernmost part of the system in Delaware to the southern end of Virginia. Subtransmission in the suburban Wilmington area is provided by a 34.5 kv system which serves the highly industrialized area to the north and west of Wilmington. Service throughout the remaining area of Delaware Power's Northern Division, which is comprised of New Castle County, is 12 kv. Subtransmission in the remaining area of the system is provided largely by 22 kv lines, with the exception of limited localities where 44 kv is used.

During the test period the net energy available for total system use was 2,563,132 mwh at generation, which includes a net power interchange of 110,058 mwh with Philadelphia.

Delaware Power provides firm wholesale for resale electric service to ten municipally-owned customers, two small investor-owned customers and three cooperatively-owned customers. The municipally-owned customers are: Middletown, Dover, Lewes, Clayton, Milford, Smyrna, Newark, and New Castle, all in Delaware; and St. Michaels and Centreville, Maryland. Chestertown Electric Light and Power Company, Maryland, and Stockton Light and Power Company, which operates in Maryland and Virginia, are the investor-owned customers. The cooperatively-owned customers are Choptank in Maryland, Delaware Coop., and Accomac-Northampton, a Virginia organization.

In the aggregate, Delaware Power's wholesale customers purchase approximately 350,066,556 kwh a year. During the test period the System's total electric revenues from all wholesale services amounted to $3,851,544. Wholesale electric sales during the test period referred to generation were 14.4 percent of total system kwh sales referred to generation and 8.5 percent of total system electric revenues.

With the exception of the rate schedules of Dover's emergency service and service to General Foods, the municipalities and investor-owned customers of the Delaware Power System are billed according to a tariff rate. Delaware Power's FPC Electric Tariff, Original Volume No. 1, and Maryland Eastern Shore's FPC Electric Tariff, Original Volume No. 1. The cooperatives are billed according to Virginia Eastern Shore's Rate Schedule FPC No. 4 (Accomac-Northampton), Maryland Eastern Shore's Rate Schedule FPC No. 8 (Choptank), and Delaware Power's Rate Schedule FPC No. 29 (Delaware Coop.), which are all identical, and which are considerably lower than the tariff rate. The same fuel adjustment is contained in both the tariff and the Cooperative rate schedules.

The Town of Centreville receives a power plant credit of $3.20 per kw of firm capacity, which amounted to $6,368 during 1962. The City of Dover purchases energy from Delaware Power under three separate rates: The tariff rate for energy for resale to Dover Air Force Base and to certain ultimate consumers in the vicinity of the Air Base; Rate Schedule FPC No. 31(b) for energy resale to the General Foods Cooperation, a rate substantially lower than the tariff rate and slightly higher than the cooperative rate; and Rate Schedule FPC No. 32 providing for emergency and breakdown service. No revenues were recorded during the test period under rates 31(b) and 32.

Operations of St. Michaels

St. Michaels is a town of about 1500. It is located on the Miles River, in Talbot County, Maryland. St. Michaels owns and operates an electric distribution system, which furnishes electricity to 600 ultimate consumers inside its corporate limits, and to 900 ultimate consumers outside its corporate limits in wholly unincorporated territory. St. Michaels also sells electricity at wholesale to Intervenor, Choptank Electric Cooperative, Inc. for resale to about 200 rural consumers in Choptank's Royal Oak Division, which is also located in Talbot County, Maryland, immediately adjacent to St. Michaels' lines. St. Michaels thus supplies electric energy directly to 1500 rural ultimate consumers, indirectly at wholesale to 200 rural consumers, and in total at wholesale and retail to 1700 rural ultimate consumers on Maryland's Eastern Shore.

St. Michaels buys wholesale power from Delaware Power for resale at both wholesale and retail to rural ultimate consumers.

Operations of Dover

The City of Dover, Delaware, covers approximately 8 square miles. Dover owns and operates a municipal electric distribution system which serves retail electricity in an area of approximately 88 square miles. Dover's distribution system is divided for purposes of rates and operations into three segregated and separate compartments by the terms of the three contracts under which Dover purchases electricity at wholesale from Delaware Power. Dover buys wholesale power from the Delaware Power for resale under one contract to rural retail ultimate consumers only, under one contract for resale to one urban industrial consumer only, and under a third contract for emergency resale to Dover's own generating plant's ultimate consumers at retail only.

Operations of Stockton

Stockton is located in the general area of Girdletree, Stockton and Welbourne in Worcester County, Maryland, and its Virginia lines in the general area of Franklin City, Greenbackville, Sinnickson and Silva in Accomac County, which are contiguous and embrace about 70 miles of lines. Stockton serves 862 electrical retail accounts at 862 delivery points to 679 customers. Delaware Power has transmission but no distribution lines in Stockton's territory. Stockton doesn't own a substation, but it owns 2400 volt transmission lines that sub-transmits from the Seller's substation to a point where Stockton splits and distributes through three major trunk feeders. Stockton has a small capital base with only 35 shares issued and owned by Mr. Porter. While its rate of return in 1963 was about 13 percent the total net profit amounts to about $6,000 annually. Stockton has never paid a dividend but the net profits have gone back into improving its plant.

Operations of the Cooperatives

Choptank Electric Cooperative is now serving from the Bohemia River in Cecil County, down to the Virginia line, and from the Chesapeake Bay to the Atlantic Ocean. This includes nine counties. Choptank has over 3000 miles of lines, and is serving approximately 1400 members. Choptank borrowed about ten million dollars from REA to construct its facilities.

Delaware Electric Cooperative has over 2000 miles of line and 12,400 members. It borrowed eight million dollars from REA. Delaware has five small commercial accounts. It serves some small processing industries and a small electronics manufacturing plant.

Accomac-Northampton Electric Cooperative serves along the eastern and western parts of Accomac and Northampton Counties. The territory is approximately 70 miles long and 6 miles wide. Some of the territory is inaccessible by vehicles from the road. Accomac serves 5400 customer members.

Each of the Cooperatives was organized by farmers to obtain electric service which they had been unable to obtain from either investor-owned or municipal electric utilities. Persons who are served with electricity by the Cooperatives may become members. Any revenues received by the Cooperatives for electric service in excess of the cost of furnishing such service is returned to the persons served as capital credits on the basis of the amount of energy purchased.

The Delaware Power's transmission system is so located that in almost each instance delivery is made to the Tariff Customers at their respective load centers. By contrast, since their loads developed after the basic transmission system of Delaware Power had been constructed, the Cooperatives are forced to build lines from their load centers to the points on Delaware Power's lines in order to obtain service. Likewise, the Cooperatives provide their own substations, whereas in the normal case Delaware Power furnishes the substations required for delivery to the Tariff Customers.

THE PLEADINGS

Position of St. Michaels and Dover

The rates charged by Delaware Power to the Cooperatives since February 1, 1963, are admittedly just and reasonable. The testimony of Respondents is that the lower rates charged by Delaware Power to the Cooperatives approximately equals the Cooperatives' estimated cost of proposed generation and transmission facilities. The testimony of Delaware Power shows that its wholesale rate reduction to the Cooperatives, effective February 1, 1963, was necessary to prevent the loss of these wholesale customers to self-generation and transmission. The rates presently charged by Delaware Power to its municipally-owned complainant wholesale customers are "unlawfully discriminatory and subject the municipalities to undue prejudice and disadvantage in favor of the defendant company." Delaware Power should be ordered to charge to Complainants the same rates which it has admitted to be just and reasonable for its Cooperative Customers. Respondents should be further ordered to eliminate the alleged discriminatory and unreasonable conditions from its contracts with the City of Dover. The Congressional intent in passing the Federal Power Act of 1935 was to assure municipalities and cooperatives as publicly owned or non-profit agencies, equal treatment as members of a common class. St. Michaels and Dover submit that the record shows that the Complainants are entitled to equal treatment with the Cooperatives as members of a common rate class of publicly-owned or non-profit wholesale customers. Delaware Power, having voluntarily filed the rates with the FPC which it has charged to the Cooperatives since February 1, 1963, should be ordered forthwith to charge the same rates to the municipal complainants, St. Michaels and Dover, as members of a common class of publicly-owned or non-profit wholesale customers, as the lowest reasonable rates, measured by the value of the service and the defendants alleged own admission of their reasonableness.

Position of Stockton

Stockton has paid and continues to pay more for energy it purchases than do the Cooperatives. Stockton's retail customers therefore have paid and continue to pay higher rates for energy than rates paid by customers of the Cooperatives in Stockton's competing general area. The Cooperatives are able to sell to their resale customers in Stockton's area at rates lower than Stockton can sell to its customers, thus producing unfair competition. Delaware Power and affiliates are able to sell at lower rates to retail customers than Stockton can sell to its customers directly because of higher wholesale power costs. Stockton has lost and will continue to lose customers and customers' good will and to receive undue complaints from customers. Stockton's normal customer increase has been and is being funnelled to competing Cooperatives. "Stockton is unable to get its fair share in the next two decades of the rapidly expanding market that is developing because of the new Chesapeake Bay Bridge Tunnel, the new Delaware-New Jersey Ferry from Cape May, and the new Delaware-New Jersey Bridge near Wilmington." Stockton has been prevented and is kept from being able to spread its overhead and other fixed charges—admittedly higher due to the smallness of Stockton's operation than the overhead of Delaware Power—over a larger customer load that will naturally result in reduction of that overhead ratio.

Position of the Cooperatives

The determination of the issues here presented is controlled by the recent holding of the Commission in *Southwestern Public Service Company*, Opinion No. 451, issued March 2, 1965, 33 FPC 343, approving lower rates to the Cooperatives. Relevant circumstances and conditions reflected in this record are indistinguishable from those on which *Southwestern* opinion was grounded. Cooperatives are carrying out the congressional program promulgated in the Rural Electrification Act of 1936. Cooperatives are providing complete area service in sparsely occupied areas. All of Delaware Power's customers have benefited from the sales to Cooperatives. Delaware Power would lose Cooperative business to the detriment of all customers if rates to Cooperatives were increased. There are substantial differences in nature of service rendered by Cooperatives from that provided by Tariff Customers. No competitive business relations exist between Cooperatives and Tariff Customers. The Commission's holding in *Southwestern* that Cooperatives represent a separate resale customer classification entitled to lower rate reflects decision of numerous courts and commissions. Differences in rates are not necessarily unreasonable. Threat of loss of business justifies a special rate. Historically, Delaware Power has treated Cooperatives as separate class and sold to them at lower rates than to Tariff Customers. This practice is consistent with the national pattern. Lower rates to Cooperatives are particularly justified because Delaware Power usually delivers to Tariff Customers' load centers whereas Cooperatives must build to companies' lines to obtain service. Cooperatives' loads place lesser burden than Tariff Customers' loads on Delaware Power's system.

Position of Delaware Power

St. Michaels, Dover, and the Staff are wrong in contending that because Delaware Power gave a rate to the Cooperatives, the same rate must be extended to the Tariff Customers. To the extent that this argument is based upon an assumption that Delaware Power is bound to the same rate of return from Tariff Customers as that yielded by the rate negotiated with the Cooperatives, this is directly contradictory to the holding of the Commission in the *Southwestern* case. Actually, this is a stronger case than *Southwestern*, since here Delaware Power was confronted with the reality of a newly proposed competitive generating and transmission facility when it negotiated the Cooperatives' contracts. And the Commission flatly held in the *Southwestern* case that there could be two rates of return, and a negotiated rate as to one class of jurisdictional customer did not establish a "just and reasonable" rate of return for rate-making purposes for the other. The claim for a further reduction in rates made here follows by only two years after the substantial reductions which Delaware Power has previously made in their wholesale rates. It offered a substantial reduction to the Tariff Customers when it filed a tariff with the Commission, which became effective May 1, 1963. The reduction to Tariff Customers amounted in the aggregate to approximately $300,000 annually, effective May 1, 1963. Furthermore, a reduction of approximately $200,000 annually was made to the Cooperatives in 1963, after the new contracts were entered into, which was approved by the Commission's order issued March 15, 1963. Thus, Delaware Power has, within the last two years, made reductions in their wholesale rates aggregating approximately $500,000 annually. Any further reduction would be wholly unjustified, contrary to the record evidence, and contrary to Commission precedents. Delaware Power submits that notwithstanding the allegations in their complaints, the record here shows that the Complainants have been and are enjoying exceptionally large profits from their distribution operations based upon the wholesale rates being paid to Delaware Power. Thus, Mr. Porter for Stockton testified that the rate of return earned by his company was in the range of from 12 to 15 percent. Mr. Fairbanks for St. Michaels testified that the rate of return realized by that municipality on its electric business was "probably in the neighborhood of 12 percent" at this time and prior to the rate reduction made in June 1963. The record also shows for the City of Dover that for the four years prior to 1962, before the City was required to meet its obligations under the revenue bonds, the City's electric operations were so successful that it was able to transfer about $500,000 in each year to the City's general funds. The record also shows that the City of Dover has no investment in the facilities necessary to serve General Foods, and yet it realizes from it a profit of approximately $70,000 annually. Similarly, Dover realizes $32,000 annually from sales to the Dover Air Force Base.

Delaware Power submits that Complainants and the Commission's Staff have not sustained the burden of proof which is upon them to show that the rates and charges involved are either unjust, unduly discriminatory or unduly preferential. Complainant City of Dover has not shown that any of the provisions of its existing contracts are in any respect unreasonable. The complaint proceedings in Docket Nos. E-7114, E-7117, and E-7175 should be dismissed and the investigation proceeding in Docket No. E-7137 should be terminated. The Power Supply Agreement, as amended by the First Supplemental Agreement, filed as Exhibit 96, and the Joint Use Agreement, should be approved and the companies be ordered to execute the same.

Position of Staff Counsel

There is no substantial difference between the service rendered by Delaware Power to the three Cooperatives and that rendered by the system to the municipalities and private companies. These customers all receive three-phase service from supply systems whose voltages range from 69 kv to 12 kv. Some customers from both groups take service from the 69 kv power supply network, and some customers in those groups receive service from the transmission network. The Cooperatives all have multiple delivery points whereas the Tariff Customers, except for Newark and Dover, have single delivery points. The president of Delaware Power conceded that the quality of service to all wholesale customers is substantially equal.

Staff Counsel submits that Delaware Power and the Cooperatives erroneously rely on the *Southwestern* case to support their position on the discrimination issue in this case. In the present case the alleged discrimination is against ten municipally-owned electric systems and two small privately-owned utilities. Four of the ten municipalities presently served at wholesale for resale by Delaware Power were "rural areas" under the definition of the Rural Electrification Act. The other six cities all had populations of less than 5,000. The investment per customer of the Cooperatives in the instant case is only slightly more than half the investment per customer cited by the Commission for the Cooperatives in the *Southwestern* case.

In the *Southwestern* Opinion, the Commission pointed out that the Cooperatives there represented 15.8 percent of the company's total electric sales in the test year, and sales to its other wholesale customers were 6.4 percent of its total sales for that year. The situation in the instant case is significantly different. Here sales to the Cooperatives (adjusted to Power Supply) represent only 6.01 percent of the Delaware Power's total electric sales (adjusted to Power Supply) for the test year, while sales to the Tariff Customers (adjusted to Power Supply) represent 8.35 percent. The Cooperatives' load of 25 mw in this case is only 5 percent of the total system load, while Tariff Customers' load represents 8 percent of total load. The differences are not sufficient to justify separate service classifications for Cooperatives and for municipally-owned and investor-owned resale customers in the instant proceeding. Delaware Power has voluntarily agreed to serve three of its wholesale for resale customers at rates returning 4.07 percent. Therefore, in the absence of a showing that there is actual injury to the Delaware Power by reason of the level of these rates, a rate of return of 4.07 percent for wholesale business must be considered to be fair. Application to the Tariff Customers of the rates now charged the

Cooperatives, with an allowance for substation costs, would return 4.07 percent to the Company. Even if this may be the lower limit of the zone of reasonableness, it is still within that zone. The Staff contends that the upper limit of the zone of reasonableness in this case is 6 percent, though Delaware Power claimed that 6⅛ percent rate of return is justified for the Company. The Staff recommends that the rate presently offered to the Cooperatives by the Delaware Power system be extended to all firm wholesale for resale customers (including service to Dover for resale to General Foods) with an appropriate substation charge for those customers for which the Company provides a substation, that charge to be calculated so as to provide the Company with a 4.07 percent return on its substation investment. This will result in a fair return to the system of 4.07 percent on all firm sales of electricity at wholesale for resale, and will eliminate the alleged undue discrimination among customers of the wholesale class.

THE CONTROVERSIAL RATE REDUCTION

The record shows that Delaware Power was actually faced with an imminent proposal by the Cooperatives to construct their own generation and transmission facilities before they entered into the latest contracts with them establishing the existing rate level. Mr. Gardner, President of Delaware Power, described the background of negotiations which resulted in the various contracts with the three intervenor Cooperatives here involved. He testified that the Cooperatives had always bought all their power requirements from Delaware Power. At first they negotiated separately. About ten years ago they joined together to form the "Delaware Public Committee" and then insisted upon negotiation of rate and contract matters through this Committee. Although some prior reductions sought by them were not successful, in 1961 new contracts were negotiated with them, which ran for a period of five years from that date, and which made a reduction in charges of approximately 8 percent.

Mr. Gardner further testified that thereafter, during early 1962, his associates heard that the Cooperatives had engaged consulting engineers to conduct a feasibility study for construction of their own generating plant and transmission system. On July 19, 1962, a news story appeared in which the three Cooperatives announced the formation of a new Cooperative, called "Delmarva Electric Cooperative," to generate and deliver power to the three Cooperatives, and also announced plans to build a generating plant at Blades, Delaware, all to be financed with a loan from the Rural Electrification Administration.

After confirmation from representatives of the Cooperatives of their plans as announced in the newspapers, a series of meetings were held, and the contracts which are now effective resulted from these meetings and negotiations.

As to the considerations underlying the offer made by Delaware Power, Mr. Gardner testified that they had been informed by the representatives of the Cooperatives that the feasibility study was substantially complete and that there had been informal discussions with the Rural Electrification Administration as to the availability of necessary funds to construct the generating and transmission system; that Delaware Power knew they were competing with 2 percent money and zero income taxes, and that the resulting financial savings could offset substantially lower economic efficiency in generating and transmitting electric energy; and that if the Cooperative load were lost there would be a substantial amount of cost burden shifted to other customers and ultimately there would be the adverse economic situation of duplicating utility systems with ultimate higher costs for all consumers.

Mr. Gardner testified that Delaware Power decided to offer a reduction in rates to the Cooperatives of approximately $200,000 a year. After extended discussions, the Cooperatives accepted the reduced rate, with assurance from the Cooperatives that they would not file an application for a loan to construct duplicating generating and transmission facilities for five years after the effective date of the contract. The contracts are on a year-to-year basis after five years. On cross-examination Mr. Gardner testified that he was reliably informed that the Cooperatives' feasibility study was substantially complete; that Delaware Power felt that it had to give the Cooperatives "a rate which was approximately as good, at least, as their estimated costs of generation and transmission with their own system." Mr. Gardner said that in other areas of the country electric companies had lost Cooperative loads when the rate offered was not low enough. Mr. Gardner was corroborated by the testimony of the Cooperative witnesses, particularly Mr. Paris C. Kirby, President of Delaware Electric Cooperative, Inc.

The Statement of Position of the REA Administrator, submitted herein, narrates the history of rate negotiations between rural electric cooperatives and their wholesale power suppliers since 1935, when the rural electrification program was instituted. It states that by 1937 negotiations with operating utilities had resulted in the filing of special wholesale rates for cooperatives in more than 20 states. State commissions approved special classifications and rates for service to rural electric cooperatives at an early date. The practice has continued to date and is allegedly prevalent throughout a large part of the electric utility industry.

The Commission has already recognized in prior cases that competitive conditions justify special rates in certain circumstances without such rates being unduly discriminatory. *Natural Gas Pipeline Company of America*, 28 FPC 731. Another case in which the Commission went along with a special competitive rate was *Southern Natural Gas Company*, 29 FPC 323 at 353.

Staff Counsel concedes that if one member of a class has superior bargaining power he has every right to bargain for as low a rate as he can get. However, Staff Counsel argues that once a lower rate is offered these matters cannot thereafter be ignored when dealing with other members of the wholesale class.

The flaw in this contention goes to the evidence adduced in this proceeding, which does not support Staff Counsel's conclusion that Complainants and the Cooperatives are truly members of the same wholesale rate class within the meaning of Section 205 of the Act.

Interestingly, Counsel for St. Michaels and Dover have incorporated an electric cooperative corporation, the Marvadel Electric Cooperative, Inc. The city councils of St. Michaels and Dover have passed resolutions authorizing their membership in that corporation. However, thus far this action failed to convince Delaware Power that Municipalities have bargaining power similar to that of the Cooperatives. If and when Marvadel reaches the stage of preparedness for ordering a feasibility study of duplicate generating facilities and also of securing an advantageous REA construction loan, Delaware Power will undoubtedly do its utmost to avoid competition by voluntarily accepting leaner profits in the lower zone of a just and reasonable rate. However, it seems improper to order a rate reduction designed to yield a 4.07 percent rate of return. Particularly when consideration is given to the valid differences of opinion about the certain allocations and adjustments proposed by the Staff and discussed in subsequent sections herein. Such action would be contrary to the seller's position and is not warranted under the *Southwestern* case.

A great effort was made during the course of the hearing by St. Michaels, Stockton and Dover to demonstrate that basically they and other Tariff Customers rendered service in the same type of area and were faced with the same type of burdensome service problems as were the Cooperatives. Likewise in their respective briefs and in Staff's brief and reply briefs filed in this case, argument is labored that Stockton and St. Michaels operate exclusively in rural areas.

To the extent that the Tariff Customers operate in sparsely occupied areas, their problems are, of course, the same as those of the Cooperatives. However, none of them have very many miles in truly sparse rural areas. Only the Cooperatives have been willing to go into the low consumer density areas on a large scale. A good example is the Accomac-Northampton Electric Cooperative. Many marshy areas are traversed by Accomac's lines which create both construction and maintenance problems. Of its approximately 5,400 consumers there are roughly 500 idle services, and about one-half of the members are farm labor or other marginal consumers not having a regular income for the whole year. A glaring contrast are the 3,276 rural consumers shown for the City of Dover. One of these counted as a rural customer because it is outside of the corporate limits of the city is the Dover Air Base. Although the air base is counted as only one customer, actually it takes through one meter electricity for hundreds of facilities for air base personnel housing. The terrific building boom which has resulted from the location of the air base and the General Foods plant in the Dover area has caused the areas outside of Dover to become urban in nature. Incidentally, the lines extend for a distance of not more than six miles from the corporate limits of the city.

To serve the 3,276 rural consumers outside of the city limits, Dover has 75 miles of line. This is probably a greater consumer density than Delaware has in its entire system. In this connection, the extension policy of Stockton is that "The Company will at its own expense make the service extension where the distance does not exceed 150 feet." This policy became effective on May 1, 1931. Obviously, area coverage was not pressed vigorously by a utility company so restricted.

In the case of St. Michaels, the customer must pay for all lines built on private property. In addition, the rural customers have an extra charge of 50 cents per month imposed upon them. This likewise is obviously not conducive to complete area coverage.

Dover also formerly required customers to advance the entire cost of construction. This is no longer a factor since the entire area is now covered with lines. In contrast to this was the experience of the Delaware Cooperative, which built one and one-half miles of line to serve one customer. The customer was required merely to take out a membership in the Cooperative and pay a $5.00 membership fee.

COMPETITION

In *Southwestern* the Commission considered whether the difference in wholesale rates would seriously prejudice the competitive business relations between the parties. Here, there is no true competition between the Cooperatives and any of the Tariff Customers. The President of Choptank testified that Choptank had never taken or attempted to take a customer away from St. Michaels. The manager of St. Michaels conceded that Choptank had never taken a customer of St. Michaels but the latter had given five or six of its customers to Choptank to start the line to Royal Oak. The two witnesses for the City of Dover stated that there has been no competition for customers between the Delaware Cooperative and Dover. The manager for Delaware Cooperative testified that his enterprise had never been in competition with Dover or anyone else.

Similarly, there has been no real competition between Choptank and Stockton. The Stockton manager said that no other company has lines in his area.

In the instance of the cooperative serving in an area adjoining Stockton, the cooperative had extended the service with the agreement of Stockton's predecessor. The present manager stated that he would have liked to be serving these few customers. Accordingly, the Examiner finds that no truly competitive relation exists between the Cooperatives and the Complainants.

BENEFIT TO CONSUMERS

All rate reductions received by Cooperatives for electric service are eventually refunded to the very persons served on the basis of energy purchased. This is not quite so in case of the Tariff Customers participating in this proceeding. As stated before, St. Michaels furnishes electricity to 600 customers inside its corporate limits and to 900 customers outside the incorporated territory. Similarly, Dover serves the Air Force Base and 3000 rural customers. So far the benefits from the rate reductions went primarily to the respective towns. The rural customers who live outside the towns benefit only indirectly and to a lesser extent. In case of Stockton, the rate reduction is invested in a privately owned plant. The customers only have the advantage of being served by a more dependable plant. In summary, the record reveals certain distinctly different socio-economic characteristics between the Cooperatives and the Municipal Tariff Customers. If and when the municipalities do organize as cooperatives, the benefits to their rural customers still remain uncertain.

Therefore, and because of the additional reasons outlined in prior chapters, the Examiner concludes that the Tariff Customers do not qualify as members of the wholesale electric rate class of the Cooperatives. Their rates should be ascertained separately and with reference to cost of service and all other pertinent evidence developed in this record.

COST OF SERVICE

Cost of service evidence was offered in these proceedings by the Commission's Staff, by the Respondents, and by the Cooperatives. No other party or parties offered cost of service evidence. The Staff offered three witnesses on cost of service, Mr. Bruce M. Hurt, an Accountant; Mr. I. E. Ball, an Engineer; and Mr. John J. McGrath, a Financial Analyst. Messrs. Hurt and Ball conducted the field investigation and jointly sponsored certain of the Staff exhibits. Mr. Hurt took primary responsibility for cost of service other than allocation of costs and rate of return; Mr. Ball took primary responsibility for allocation of costs and studies of certain rate schedules and Mr. McGrath took sole responsibility for rate of return. The three Respondents employed the firm of H. Zinder & Associates to prepare and make their cost of service presentation. This presentation was made by Mr. Herman Green, an Accountant; Mr. Allan J. Schultz, an Engineer; and Mr. Phillip R. Friend, an Engineer and Financial Expert. Mr. Green took primary responsibility for cost of service other than allocation of costs and rate of return; Mr. Schultz took primary responsibility for allocation of costs; and Mr. Friend took sole responsibility for rate of return.

The REA Cooperatives offered one witness on cost of service, Mr. T. Foley Treadway, Jr., an Engineer. Mr. Treadway testified that he did not prepare a cost of service study himself; that he used the Staff's study even though there "are a number of assumptions made and conclusions reached in that study with which we do not necessarily agree." Mr. Treadway disagreed with the Staff's cost allocation method which he therefore "adjusted to properly allocate the costs among the several classifications of customers."

Both Delaware Power and Staff prepared system-wide cost of service studies, using for the base period the 12-months ended June 30, 1963. Delaware Power's study before any allocation of costs totalled $44,601,279 (Exh. 21, Sch. 1), while that of the Staff totalled $42,895,229 (Exh. 1, Revised, Sch. 1). The difference of $1,706,050 is attributable to differences in treatment accorded the following cost of service components:

	Differences, Delaware Power over (under) staff	Per Delaware Power	Staff
Wage adjustments (operating expenses)	$421, 225	$21, 169, 973	$20, 748, 748
Federal income tax allowance	795, 166	5, 219, 006	4, 423, 840
State income tax allowance	(164)	363, 565	363, 729
Return	431, 283	9, 801, 563	9, 370, 280
Adjustment for taxes based on gross receipts	8, 540	23, 057	14, 517
Rate case expense	50, 000	50, 000	
Total	1, 706, 050		

Of the $1,706,050 of Delaware Power's costs in excess of those arrived at by the Staff, only $163,643, or 9.6%, is applicable to the jurisdictional business, leaving $1,542,408, or 90.4%, related to nonjurisdictional business.

The net difference of $163,643 to wholesale or jurisdictional customers as calculated by the Delaware Power and the Staff is shown in Exhibit 86, Schedule 2.2, and is tabulated below in summary form:

Difference in principle used in computing cost of service	Difference on cost of service to wholesale customer classes—companies over (under) staff	
	REA cooperatives	Tariff customers
(1) Subfunctionalization	($2, 159)	$11, 065
(2) Allocation	(129, 053)	101, 338
(3) Wage adjustments	8, 468	15, 088
(4) Rate of return—6⅛ percent versus 6 percent	12, 001	16, 626
(5) Federal tax rate—50 percent versus 48 percent	19, 481	26, 791
(6) Treatment of liberalized depreciation	8, 894	14, 397
(7) Adjustment for gross receipts taxes	255	489
(8) Rate case expenses	19, 436	30, 564
(9) Tax adjustments	3, 861	6, 101
Total	(58, 816)	222, 459

Because there is only $163,642 of difference between Delaware Power and Staff as related to the jurisdictional resale business, the Examiner finds, after an examination of the controversial cost of service issues, that it is sufficient to provide only brief comments regarding these items comprising the $1,706,050 of differences. As a matter of convenience, and for ease of reference, the Examiner will use the Staff's system-wide cost of service totalling $42,895,229 for purposes of arriving at allowable revenues for the resale service.

The wage adjustments totalling $421,225, represented as wage increases annualized for the base period in the amount of $85,367, and for the eight months' period following the end of that period in the amount of $335,858, appear to be legitimate and justified costs for inclusion in the cost of service. Delaware Power indicates the wage increases are known and measurable and cites several Commission decisions in support of its position on this issue. *Mississippi River Fuel Corp.*, Docket No. G–1641, 11 FPC 288 at p. 306; *El Paso Natural Gas Co.*, Docket No. G–4769, 28 FPC 688; *Otter Tail Power Co.*, 8 FPC 393 at p. 402, and others.

Delaware Power's claim for a greater, by $795,166, Federal Income Tax allowance than that of the Staff has its origin in three items, namely: The FIT rate, Delaware Power 50%, Staff 48% (47.483% effective rate); Rate of return, Delaware Power 6⅛%, Staff 6%; and the rate base, Delaware Power $160,025,512, Staff $156,171,325. As subsequently discussed, the Examiner would adopt the position of the Staff on each one of the above three items, which are supported in the main by recent Commission decisions. *Southwestern Public Service Company*, Opinion No. 451, 33 FPC 343; *Alabama-Tennessee Natural Gas Co.*, Opinion No. 417, 31 FPC 208 at pp. 220, 221; and *Kansas-Nebraska Natural Gas Co., Inc.*, 25 FPC 448 at p. 451.

Delaware Power's claim for return of $431,283 in excess of that shown to be sufficient by the Staff is due to the Delaware Power's use of (1) a higher rate of return—6⅛%—while the Staff used 6%, and (2) Delaware Power's application of its higher rate to a larger rate base of $160,025,512, while the Staff applied its 6% rate to a rate base of $156,171,325.

The difference of $3,854,187 between the two rate bases is largely attributable to one item of $4,198,086, representing the amount of the Average Accumulated Deferred Taxes—Liberalized Depreciation, in Account 282, as of June 30, 1963. The Staff deducted this accumulated deferred tax amount from the rate base in accordance with the treatment of this item in the Commission's Opinion in *Alabama-Tennessee Natural Gas Company, supra*, and again in its Opinion in *Southwestern Public Service Co., supra*.

The remaining item of significance, accounting for differences in the rate bases of Delaware Power and Staff, is the amount of $344,930 relating to Working Capital. The Staff has computed a larger amount of Working Capital —$4,794,825—than Delaware Power—$4,449,895. The difference of $344,930 is caused by differing base amounts outside the working capital calculation, but affecting its determination, such as operating expenses and the amount of Federal Income Taxes. Both parties used 50% of the FIT allowance as a deduction from working capital. There was a difference of $1,031 in the Average Electric Plant in Service, and no difference in the average Accumulated Provisions for Depreciation, as shown in Delaware Power's and Staff's rate base studies.

Turning to the rate of return, the Staff argues that the upper limit of the zone of reasonableness in this case is 6%, whereas Delaware Power's witness sponsors a rate of 6⅛%. The Commission has used 6% as the rate it considers fair and reasonable in several of its recent electric cases. *Wisconsin Michigan* and *Southwestern, supra*. Both Delaware Power and Staff witness prepared and testified to their respective capitalization calculations predicated on the date of December 31, 1963. Both witnesses agreed on the cost of debt and preferred stock, but the Staff, following the *Wisconsin Michigan* case included as part of its capitalization the amount of $7,028,093 of Accumulated Deferred Tax—Accelerated Amortization, in Account 281, and assigned a cost of 1.50% as being related to it. The Staff indicates that its calculation based on allowing a 6% rate of return on the rate base produces an allowance of 10.93% on common equity, to which if the deferred tax allowance is added produces an allowance of 11.08% on common equity.

Delaware Power was opposed to including the deferred taxes in Account 281 as one of its capitalization components. Delaware Power's brief offered many refutations to Staff's rate of return presentation and contends for a rate within a zone of reasonableness up to 6.5% as being fair and proper. Its calculations, using a 6⅛% rate of return, produces an allowance of 10.81% for common equity.

There were considerable differences in viewpoint between the parties as to the appropriate FIT rates to be used in the tax calculations of this proceeding. Delaware Power used a 50% FIT rate which was in effect during 1964 whereas the Staff used 48% (47.483 effective rate), the rate for corporations beginning January 1, 1965.

While the proper rate for the base period ended June 30, 1963, was 52%, there appears to have been good reason for departing from it—looking to the setting of future rates. Delaware Power's witness selected the 50% rate with the Commission's filing requirements in mind because the test period of the case extended into 1964. Because it was in effect for the year 1964 only, it cannot be considered more than applicable to an interim period and not proper for adjusting FIT in future rates. The Staff reasoned in terms of fixing rates for the future, going well beyond the test period in this particular instance in its determination of appropriate costs. The Staff also determined and applied in its calculations a consolidated companies' return effective rate of 47.483%, which is predicated on the 48% rate for 1965 and thereafter.

Both Delaware Power and Staff made an adjustment for taxes to reflect revenues for the test period equal to their cost of service determinations. This is a normal adjustment to be made in cost of service rate proceedings. The difference or excess of $8,540 of Delaware Power's adjustment over that of the Staff was due to the Staff's lower cost of service total.

Delaware Power has claimed an allowance of $50,000 in the base period cost of service for rate case expense. It estimated rate case expense at $150,000 to be amortized over a three year period. The Staff excluded any claim for rate case expense mainly because the Delaware Power's records showed $8,408 in total for a ten year period. Staff says it is a non-recurring expense.

It is believed that Delaware Power should be permitted to recoup its present estimated expenses of $150,000, but over a much longer period than three years. Based in part on the companies' past experience, the $150,000 should be amortized over a ten-year period. The base period cost would be $15,000 under this arrangement, instead of $50,000.

The following tabulation summarizes the position of the Examiner regarding the $1,706,050 (less $35,000 of rate case expense) of differences in the cost of service between Delaware Power and Staff:

	Delaware Power	Staff
Wage adjustments (operating expense)	$421, 225	
Federal income tax allowance		$795, 166
State income tax allowance		(164)
Return		431, 283
Adjustment for taxes based on gross receipts		8, 540
Rate case expense ($50,000 less $35,000)	15, 000	
Total	436, 225	1, 234, 825

From the above it can be seen that roughly three-fourths of the adjustments comprising the difference between the parties as related to the system-wide cost of service would be eliminated by the Examiner. To reiterate the Examiner's previous statement, because the differences are so small when allocated to the jurisdictional customers the Staff's system-wide cost of service will be adopted without change for the purpose of determining revenues applicable to the resale service.

Allocation of Costs

The most important individual item of controversy between the parties to this proceeding is that of cost allocation. However, as properly pointed out by

Staff Counsel, it is by no means the most important item in this proceeding. This controversy had the effect of expanding its apparent importance far out of proportion to its relationship to the total cost of service. The record shows that the procedures followed in allocating costs reflect the extent of the differential in cost of service between the two classes of wholesale customers and, further, whether the companies are earning revenues in excess of their cost of service to the two classes of wholesale customers.

The fundamental difference between the method of allocation advocated by the Staff and that by the companies lies in the relative costs attributed to off-peak loads in allocating costs of generation and high voltage transmission. Staff witness Ball used only non-coincidental demands for allocating costs and rejected the use of coincidental demands. On the other hand, the companies' allocation method is based on the use of both coincidental and non-coincidental peak demands.

The effect of the different methods of cost allocation in this proceeding is that the Staff's method assigns $129,053 more cost to the Cooperatives and $101,338 less cost to the Tariff Customers than under the Delaware Power's method, which was supported by the Cooperatives.

Diversity Factors

Allocation of costs of an electric utility between the several classes of customers and the resulting determination of appropriate rate levels is difficult at best. The problems that arise concern the proper use of diversity as a factor in determining the total costs to be recovered from different classes of service. The case at hand is a good example where the Delaware Power has established a resale rate applicable to municipalities and a separate rate containing lesser rate charges for Cooperatives.

The record shows that the load curve pattern of the use of electricity by the Cooperatives is such that their maximum peak does not coincide with that of the total system, whereas the maximum peak of the municipalities is practically coincident with that of the total system (Exh. 24). Where such significant differences exist among classes of customers, it is entirely reasonable and proper to have separate rates designed to meet those differences and to reflect the lower costs involved in supplying service to the customers whose peak load is not coincident with that of the system as a whole. Therefore, Delaware Power's position is clearly within the accepted general practice of public utilities granting preferential pricing to a class of customers who contribute less, percentagewise, to the system peak than they do to the non-coincident peak. The Cooperatives, of course, support the position taken by Delaware Power. The Staff and the municipal group contend that the rates to the two groups should be at the same level.

The Respondents' investment in generation and high voltage facilities is dictated by its calculations of the maximum requirements its customers will place upon the system at any one time. An investment made by a utility to supply the non-coincident peaks of its customers where diversity is known to exist in substantial amount would be an imprudent expenditure of funds and could not be held consistent with public interest. In effect, the Staff overlooks the actuality of diversity by allocating fixed costs of generation and high voltage transmission among the several classes of service upon the basis of their non-coincidental demand responsibility. It is, therefore, improper to accept the Staff allocation procedure of using non-coincident demands to distribute the fixed costs.

The Staff allocation procedure has other infirmities which cast additional doubt upon the validity of the position that the rates to the two resale classes of customers should be of the same level. The test year adopted by all the parties consists of the twelve months ended June 30, 1963, a period which included an unusually cool period during the summer months of 1962. However, in selecting the period from which demand data would be taken for use in allocating the total cost of service the Staff used only the first nine months of the test period despite the fact demonstrated at the hearing, that since the year 1956 Respondents' summer peaks have exceeded those that were established in the following winter months by a considerable margin in every year excepting the years 1958 and 1962. Furthermore, by excluding from consideration the months of April, May and June 1963, the Staff disregarded material relevant to the test period, including a system peak hour load in June of 1963 of 489.4 megawatts or some 12.8% higher than the highest peak recorded in the nine month span the Staff used for its peak determination. If the company had investment and operating costs associated with delivering a total test period of 489.4 megawatts it is accepted practice to distribute such costs in proportion to the use of the facilities. The Staff's failure to use a normal test year demand factor for allocation purposes results in understating costs to the Municipal Customers.

For the reasons stated above, and for other reasons given in the prior sections, the Examiner concludes that reasonable rate differential for wholesale energy to Cooperatives as compared to the wholesale energy to the Tariff Customers is adequately supported.

VALUE OF SERVICE

Complainants did not offer cost of service evidence. Instead, they rely conclusively on value of service arguments. Councel for St. Michaels and Dover urges in his reply brief that "* * * the Commission accept the value of service rate fixed by the 'yard stick' of potential Federally-financed competition as the measure of just and reasonable rate to all of the Defendants community-owned customers, which include both municipals and cooperatives." He proposes:

> * * * Assume the municipals alone put together a generating and transmission project either coal-fired or atomic fired, with or without water desalinization, but exempt from the Federal income tax on its financing, which will deliver power at 3.5 or 4 mills per kilowatt hour, thereby acquiring greater bargaining power than the Co-ops, and assume further that the municipals thereby obtain a rate from the Company which is lower than the present rate to the Co-ops, will we have to go thru another cost-of-service witch dance for 2 years before the Co-ops get the same value of the service rate as the municipals?

A prolonged discussion about the above presentation is not warranted herein. Complainants' presentation is conjectural and makes reference to news items, fragmentary press releases issued after the close of the hearing, and documents outside of the record in this proceeding, matter which cannot properly be considered herein. Furthermore, the value of service concept frequently causes fruitless debates[1] and at best can be used only as an ancillary standard.[2] Complex cost allocation problems in the instant proceeding make it impossible to determine the true effect of value of service on the rate structures of the litigants as distinguished from the other electricity customers who account for nearly 90 percent of Delaware Power's revenues. Accordingly, the Examiner will utilize the value of service concept in this proceeding only as an assist to influence his informed judgment in the direction of rate differentials not completely supported by cost differentials.[3]

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[1] Professor Robert L. Hale, after a study of the language of commissioners and judges in rate cases, concluded that the term has been used to refer to any noncost criterion of rate making. *"Non-Cost Standard in Rate Making,"* 36 Yale Law Journal 56–67 (1926) *I.e.,* What is the value of service of water?

[2] *Bonbright,* Principles of Public Utility Rates 1961 "Value of Service as an Ancillary Standard," pp. 82–92.

PREFERENTIAL TREATMENT

Complainants argue that provisions in the Federal Power Act, particularly those which provide that in issuing licenses the Commission shall give preference to states and municipalities, merit special consideration. They contend "that the Congressional intent in passing the Federal Power Act of 1935 was to assure municipalities as public-owned or nonprofit agencies at least equal treatment with co-ops or members of a common class of wholesale customers."

As to the claim that these municipalities are "nonprofit" within the meaning of the Federal Power Act, the Commission, in assessing annual charges, has decided to the contrary and has been upheld in the courts. Thus, in *Power Authority of the State of New York*, Opinion No. 415, issued January 13, 1964, 31 FPC 93, among other things, the Commission stated:

> * * * Section 10(e) of the Act provides that States or municipalities shall be exempt to the extent that power "is sold to the public without profit." It has long been established that whether power was or was not sold at a profit is determined by whether revenues exceed costs, and the determination is made on the basis of the figures for each individual year * * *. (pages 96–97)

This finding of the Commission was upheld on appeal in *Power Authority of the State of New York* v. *Federal Power Commission*, 339 F. 2d 269.

In view of the profits enjoyed by both St. Michaels and Dover on their purchases of energy from Delaware Power, the claim that they are "nonprofit agencies" is inconsistent with the cases cited above.

The argument advanced here is also contrary to the second decision in the *Otter Tail Power Co.*, 8 FPC 393, where the Commission dealt specifically with the question of whether a differential in rates as between municipalities and cooperatives was justified and found that it was. Nor is there anything in either the *Wisconsin Michigan*[4] or *Southwestern*[5] cases to the contrary. In the former case, the Commission found that it had an inadequate record to determine the question of separate classification as between municipalities and cooperatives. In the latter case, while the Commission dealt with the question of whether a separate classification was justified as between the cooperatives and an investor-owned utility, the reasoning and grounds for its decision in sanctioning the separate classification are distinguishable here. This case involves both municipalities and investor-owned utilities as a separate class from the Cooperatives, and the principles followed in *Otter Tail* and *Southwestern* apply with equal force and effect here.

JUST AND REASONABLE RATES

Delaware Power's rate discount for service to the Cooperatives is not being challenged by any party to this proceeding. On the basis of the evidence discussed in the section dealing with cost of service, the Examiner finds that the current wholesale charges to the Cooperatives are just and reasonable. There appears tacit consent among the parties herein that the rate of return from wholesale business should be lower than from the retail electric service business. However, no party herein suggested a difference in rate of return from service to the Cooperatives as distinguished from service to the Tariff Customers. Delaware Power favors the *status quo*, while Complainants insist that they are entitled to the same rate as the Cooperatives. Finding that a difference in these wholesale rates is warranted, the remaining question is what is the just and reasonable rate for the Tariff Customers. The Examiner concludes that it must be a rate consistent with the cost of service evidence and also fair and equitable when compared with the current rates for the Cooperatives. As discussed later, neither the Cooperatives nor the Tariff Customers are entitled to preferential rates because of socio-economic reasons.[6] The Municipalities can, of course, pursue their latest attempt to achieve the so-called status of the Cooperatives and perhaps eventually obtain assistance and low cost financing from the REA. Although a customer's threat to provide its own generating facilities is a legitimate business bargaining device, it is not a proper basis for qualifying in a particular rate class under Section 205 of the Act. Accordingly, the just and reasonable rates must be determined herein solely on the basis of the record in this proceeding.

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[3] *Cf. F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, where the Supreme Court held that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of "pragmatic adjustments."

[4] Opinion No. 432, issued June 9, 1964, 31 FPC 1445.

[5] Opinion No. 451, issued March 2, 1965, *supra*.

In the *Southwestern* case, the Commission emphasized "that the rates we are sustaining are proffered and advocated by the company; they are not being imposed over the company's objection; and we intimate no conclusion as to the result if the situation were otherwise." The same situation exists here, because continuance of the existing rates to the Cooperatives during the terms of these contracts has the express consent of Delaware Power.

As stated previously, the Municipal wholesalers do have many of the characteristics of the Cooperatives. However, the type of service rendered is not quite the same. Furthermore, the cost of service to the Cooperatives is lower than to the Municipal customers. Under the present rate set-up the Cooperatives as well as the Municipalities cover all cost of rendering the service, and also make a contribution towards profits, while Delaware Power's financial well-being depends largely on service to its other and more numerous customers. Delaware Power implies that lower rates to Cooperatives are not at the expense of the Municipalities, but at that of the stockholders and perhaps the other than resale customers who did not participate in this proceeding.

The Examiner rejects Complainants' general contention that the Municipal Tariff Customers as a group are entitled to an "equalizer" rate reduction, because their loads are predominantly rural. Neither the Municipalities nor the Cooperatives are automatically entitled to such an "equalizer."[7]

In the *Southwestern* case the Commission did not accept the Cooperatives' broad contention about belonging to a privileged rate class because of socio-economic reasons. However, the Commission paid special tribute to the contributions made by the Cooperatives in serving more remote and less profitable rural areas because of technical aspects of the service rendered to the Cooperatives. At the same time said decision also narrowed the gap between the rates of the Cooperatives and the other wholesale customers. The Commission achieved the desired result by making broad adjustments in different rates of return[8] to the different types of customers.

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[6] Carriers may not adjust rates with the motive of aiding a locality. *Texas & Pacific Railway Co.* v. *United States*, 289 U.S. 627, 637.

[7] The legislative history shows that Section 205(b) of the Federal Power Act was derived from 3(1) of the Interstate Commerce Act. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 584. "* * * where provisions of one statute have been adopted by another, the interpretation which has been authoritatively placed upon the former applies to the latter also." *Hope Natural Gas Co.* v. *Federal Power Commission*, 196 F. 2d 803, 807 (CA4).

As has often been noted in Commission decisions, rate of return is one of the most difficult and at the same time basic of our pending issues. Strictness in scrutinizing cost can be ameliorated with a more generous rate of return. As indicated in the *Bluefield* and *Hope* cases,[9] rates of return should generally be equal to that on investment in other businesses with corresponding risk, must be sufficient to insure the financial soundness of the utility and adequate to maintain credit and enable the raising of money. Extensive rate of return studies were presented in evidence by the Staff and Delaware Power.

In response to a question by Staff Counsel, Delaware Power's rate of return witness stated:

> I don't think that any one company is exactly comparable to 24 or 5 others. This is merely a guide. I think a good deal of judgment has to be made, and that is where a particular number change isn't going to change the judgment, I don't believe.

The foregoing is consistent with the statement, repeatedly made by the Commission, that the rate of return is not determined by a mathematical formula.[10] The Examiner, although approving in general the approach of the Staff, concludes that the proposed 4.07 percent rate of return is too close to the bottom of the zone reasonableness. Since none of the parties suggested a precise method of narrowing the gap between the charges to Complainants and the Cooperatives, the Examiner must reach the proper determination by exercising his own judgment in comparing and weighing the various opposing contentions of the parties.

Complainants contend that they belong to the same rate class as the Cooperatives and that therefore they are entitled to the same tariff reduction granted to the Cooperatives. Respondents insist that the Municipal wholesalers should be subject to tariffs yielding a higher rate of return than the 4.07 percent advocated by the Staff. Furthermore, Respondents demonstrated that the adjustments proposed by the Staff are rather strict. (See prior discussion on cost of service and diversity factors.) A rate of return of 4.07 percent hits a rather low level in the range of just and reasonable rates of return for this type of business. The Examiner feels that the Tariff Customers, while not *ipso facto* members of the Cooperatives wholesale rate class under Section 205 of the Act, do possess sufficient operating and size characteristics that bring them close to the bounds of said rate class. Granted that any such classification tends to be arbitrary, since a large group including a wide range of customers, can readily be split into separate classes, while as a matter of billing and administrative convenience sundry groups are sometimes lumped into one rate class. The ultimate rural electric customers of the parties herein come close to forming a single rate class. However, their wholesale suppliers, the Cooperatives and the Tariff Customers don't necessarily qualify for a single rate class. Their service demands and the cost of supplying it vary. Furthermore, as pointed out previously, a rate reduction to a Cooperative wholesaler results in a direct benefit to the ultimate rural user of the electricity. A similar reduction to a Municipal tariff wholesaler may not necessarily result in a corresponding benefit to their rural customer. This is particularly so when the interstate wholesale rates are regulated by the Commission, while the intrastate retail electric rates are subject to the various state jurisdictions. However, broad equity considerations warrant the establishment of similar wholesale rate for services eventually rendered to neighboring rural customers. The evidence in this record does not support a substantial difference in the tariffs, but does warrant narrowing the gap between charges to the various types of wholesale customers of Delaware Power.

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[8] It is axiomatic that the determination of a fair rate of return for utilities subject to our jurisdiction is not to be determined by the mechanical application of a mathematical formula. The determination we must make requires the exercise of our informed judgment on the whole of the relevant evidence in the particular case.

* * * * * * *

We are further aware that there is no precise answer to the question of a rate of return but rather that there is a zone of reasonableness within which the Commission is free to fix a rate. We feel free within the ambit of our statutory authority and the standards of due process to make the pragmatic adjustments which are called for in each particular case. (*cf. F.P.C.* v. *Natural Gas Pipeline,* 315 U.S. 575, 585–586). We think this is a case which peculiarly requires such adjustments. *Southwestern,* Opinion No. 451, issued March 2, 1965, 33 FPC at p. 354.

[9] *Bluefield Waterworks and Improvement Co.* v. *P.S.C. of West Virginia,* 262 U.S. 679; *F.P.C.* v. *Hope Natural Gas Co.,* 320 U.S. 591.

[10] *Southwestern Public Service Company,* Opinion No. 451, 33 FPC 343 at p. 346; *Midwestern Gas Transmission Company,* Opinion No. 444, 32 FPC 993 at p. 1000; *El Paso Natural Gas Company,* Opinion No. 366, 28 FPC 688 at p. 691.

In accordance with the prior discussions, including consideration of certain cost adjustments proposed by the Staff, but not fully accepted herein, giving weight to the diversity factors presentation by Respondents, and on the basis of the entire record, the Examiner finds that a proper rate balance can be achieved in this proceeding by ordering a reduction of about $229,000 annually in the rates applicable to the Tariff Customers. This reduction makes no specific allowance for the so-called socio-economic features of the rural customers. As demonstrated in Appendix B, on the basis of the Staff's cost of service computations a reduction of $229,000 annually produces a rate of return of 5.07 percent on the Delaware Power's sales to the Tariff Customers. This compares with the $400,509 reduction designed to produce a 4.07 percent rate of return, advocated by the Staff and shown in Appendix A. The reduction ordered herein will reduce the rate of return of Delaware Power's total operations from 6.70 percent to 6.63 percent, while the rate of return from "Other than Resale Service" would remain at 6.84 percent. The Examiner reaches this rate reduction as a matter of informed judgment and on the basis of all the relevant evidence in this proceeding, including cost and allocation adjustments, value of service and the diversity factor methods, advocated by the Staff and contested by Delaware Power.

Restrictive Provision for Service to the City of Dover Ordered Removed

Article XV of Delaware Power Rate Schedule FPC No. 31 provides: "Dover agrees that, if it elects to purchase such facilities, it will retain and maintain them solely for service to consumer." The consumer referred to is the General Foods plant.

The Staff submits that there is no need for Delaware Power to oversee the relationship between Dover and General Foods, which, after all, is a customer of the City not of the Company. This restriction may well affect unfavorably the cost to Dover of providing adequate electric service in the area surrounding the General Foods plant, or limit the quality of service the City could provide to others. The Examiner finds in favor of Staff's recommendation to remove the quoted portion of Article XV from FPC No. 31 as being unduly restrictive to Dover.

Delaware Power Ordered to Reconsider Rate for Standby Service to Dover

As the Company brief shows, Delaware FPC No. 32 was negotiated in early 1964 under the threat of the incipient loss of one or both of Dover's units prior to correction of certain deficiencies. At that time, Dover's full load might have been imposed on Delaware's own load at the time of the Company's annual peak. This condition of Dover's units no longer exists. Dover's units are now about to carry 16.5 mw each. Dover schedules maintenance of its units in off-peak months. The only load that Delaware Power can now expect to have imposed upon its annual peak will be the excess of Dover's load at time of Delaware's annual peak over the capacity of the single remaining Dover unit. Inasmuch as Dover's peak load was 16.9 mw in 1964, whereas its firm capacity was 16.5 mw, Delaware's cost incurrence would have been limited to 0.4 mw.

Again, the Examiner finds in favor of Staff's recommendation that Delaware Power be ordered to reconsider these charges in light of the new circumstances, make appropriate adjustments in the rate provisions, and report to the Commission for approval of these charges before they are submitted for filing as a rate schedule charge.

Restrictions of Parallel Operations Sustained Without Prejudice

Staff has not taken a position on the contentions raised by Dover with reference to the alleged restrictive contract provisions in Delaware Power's FPC Rate Schedule Nos. 28 and 31, under which Dover receives service, namely, those provisions which prohibit Dover from interconnecting the part of its system served by Delaware Power with the part of its system served from its own generators. The effect of this restriction is to assure that only customers in rural areas are served by Dover with power purchased from Delaware Power under Rate Schedule FPC No. 28. The Examiner finds that the record in this proceeding was not sufficiently developed with respect to these questions to permit a determination on issues of this scope and magnitude. Since Dover failed to adequately pursue the matter, and in order to expedite this proceeding, the Examiner is dismissing without prejudice Dover's applicable complaint. Dover should be given another opportunity to have the matter developed *de novo.*

Power Supply Agreement Modified

The controversy between the Staff and the Companies regarding the proper method of computing the tax factor percentage used in the Power Supply Agreement (Exh. 96) is a matter of basic principle. The Staff contends that its method of calculation correctly reflects the effect on Federal income taxes of the excess of tax over book depreciation.

Delaware Power admits in its brief the correctness of this approach in determining the cost of service, but claims that the tax factor percentage for use in the Power Supply Agreement "* * * is a horse of a very different color, and, in fact, a different animal." The Delaware Power brief explains further that the three affiliated companies "* * * are seeking to recover dollars in charges, not to set up a formula whereby an even 6 percent rate of return is received, with flow through, after tax deductions and adjustments, as in a strict cost of service approach." The Examiner holds that this power supply arrangement should be based on a cost of service determination, including an acceptable return and associated taxes, because once this agreement becomes effective, the return and taxes passed back and forth among the three companies become a part of purchased power charges or credits to production expense for each of the companies, and may be beyond the reach of state regulatory agencies.

Contracts With Philadelphia and Conowingo

Delaware Power Rate Schedule FPC No. 2 provides for the sale of electricity by either Delaware Power or Philadelphia at points along the boundary between the two systems where it is more economical for one to serve retail customers from the distribution system of the other company. Rate Schedule FPC No. 8 is a similar agreement with Conowingo. These are "border-line" agreements, the charges for which reflect local distribution investment only.

Delaware Power Rate Schedule FPC No. 22 is likewise a cost-of-service type of agreement with Conowingo for the delivery to Conowingo by Delaware Power of 21 mw received from Philadelphia. The annual charge of $55,808 is a reasonable rate for this service, and has been credited to the cost of power supply as determined in the Staff's cost study.

Delaware Power Rate Schedule FPC No. 19 is an agreement with Philadelphia providing for coordinated planning and operation of Delaware's generation and transmission facilities with Philadelphia, and thus with the PJM Pool. Transactions thereunder for the exchange of capacity and energy are typical of many arrangements elsewhere in the industry. Charges for specific facilities appear to be reasonable for the use made of them by the parties during the test period.

Staff study of the above rate schedule was directed primarily to a disclosure of their effect on the determination of the cost of service to wholesale customers. The Examiner adopts the Staff's conclusion that the charges and revenues contained in these schedules do not have any adverse effect on the rates for firm power sales by the System to its wholesale for resale customers.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced, and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Delaware Power and Light Company, a corporation organized and existing pursuant to the laws of the State of Delaware, The Eastern Shore Public Service Company of Maryland, a corporation organized and existing pursuant to the laws of the State of Maryland, and The Eastern Shore Public Service Company of Virginia, a corporation organized and existing pursuant to the laws of the State of Virginia, own and operate facilities, among others, for the transmission and sale at wholesale of electric energy transmitted from points of generation in the States of Delaware, Maryland and Virginia, among others, to points of consumption outside the State in which it is generated, which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Delaware Power and Light Company, The Eastern Shore Public Service Company of Maryland and The Eastern Shore Public Service Company of Virginia are, therefore, public utilities within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission.

(2) Delaware Power, Maryland Eastern Shore and Virginia Eastern Shore, in effecting each of the sales of electric energy at wholesale under the rate schedules referred to in the Commission's order issued November 18, 1963, as amended, transmit and sell electric energy at wholesale in interstate com-

merce for resale within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(3) The rates the Delaware Power and Light System charges its cooperatively-owned wholesale for resale customers are lower than the rates it charges its municipally-owned and investor-owned wholesale for resale customers.

(4) The services that Delaware Power and Light System renders to its municipally-owned and investor-owned wholesale for resale customers are similar though not fully comparable to those services rendered to its cooperatively-owned wholesale for resale customers. The Tariff Customers and the Cooperative Customers of the Delaware Power and Light System compose two distinctly separate classes of service commanding separate rates that are reasonably close.

(5) A 5.07 percent is a just and reasonable rate of return to the Delaware Power and Light System from its Municipal Tariff Customers and a 4.07 percent is a just and reasonable rate of return from its Cooperative Customers.

ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided by its Rules of Practice and Procedure, that:

A. Delaware Power and Light System Companies are to file within 60 days:

(1) Rate schedule supplements to their rate schedules for wholesale firm service to Middletown, Dover (Rate Schedule Nos. 28, 31), Lewes, Clayton, Milford, Smyrna, Newark, New Castle, St. Michaels, Centreville, Chestertown Electric Light and Power Company, and Stockton Light and Power Company, superseding their present rates and charges for service to those customers with the rates and charges designed to reduce by $229,026 annually the revenues from said Tariff Customers on the basis of operations during the 12-month test period ended June 30, 1963.

(2) The above reduction is also applicable to service to Dover for resale to General Foods.

B. Delaware Power and Light System may make an appropriate substation charge for those customers for which it provides a substation.

C. The provision "Dover agrees that if it elects to purchase such facilities, it will retain and maintain them solely for service to consumer" be removed from Delaware Power's Rate Schedule FPC No. 31.

D. Delaware Power System Companies should reconsider Rate Schedule FPC No. 32 as applicable to standby service to Dover in light of the new circumstances, and report to the Commission for approval of properly adjusted charges before they are submitted for filing as a rate charge, or if no adjustments are deemed appropriate, submit to the Commission data supporting such conclusion.

E. The Power Supply Agreement, Delaware's Rate Schedule FPC No. 33 and Supplement, should be modified to reflect the prior finding in this decision approving the Staff's method of computation based on a six percent rate of return and cost of service determination reflecting the associated taxes.

F. Upon compliance by Delaware Power and Light System Companies with all provisions as set forth above, their rate schedules and supplements thereto referred to above be determined to have been found just, reasonable and not unduly discriminatory or preferential or otherwise unlawful within the meaning of the Federal Power Act, and thereafter this proceeding be terminated.

ALLEN C. LANDE,
Presiding Examiner.

APPENDIX A

DOCKET NO. E-7114, ET AL.

Delaware Power and Light Co. and subsidiaries

[Annual reduction in resale revenues to produce 4.07 percent rate of return [1] using 48 percent FIT rate (47.483 percent effective rate), 12 months' period ended June 30, 1963]

	Resale service				
	Total	Total resale service	Tariff customers	REA co-ops	Other than resale service
(1) Revenues required to produce 4.07 percent return on resale service	$44, 676, 153	$3, 451, 035	$2, 009, 775	$1, 441, 260	[2] $41, 225, 118
(2) Less: cost of service, 48 percent FIT rate	42, 895, 229	4, 029, 607	2, 340, 625	1, 688, 982	38, 865, 622
(3) Change in cost of service	1, 780, 924	(578, 572)	(330, 850)	(247, 722)	2, 359. 496
(4) Percent of revenues retained after taxes (schedule 11)	----------	----------	50. 4207	50. 6779	50. 2515
(5) Adjustment to 6 percent return (line 3 times line 4)	$893. 325	($292, 357)	($166, 817)	($125, 540)	$1, 185, 682
(6) Return at 6 percent (schedule 4, p. 1)	9, 370, 279	908, 479	518, 453	390, 026	8, 461, 800
(7) Adjusted return (line 5 plus line 6)	10, 263, 604	616, 122	351, 636	264, 486	9, 647, 482
(8) Rate base (schedule 4, p. 1)	156, 171, 325	15, 141, 458	8, 641, 003	6, 500, 455	141, 029, 867
(9) Rate of return, percent (line 7 divided by line 8)	6. 57	4. 07	4. 07	4. 07	6. 84
(10) Revenues based on currently applied rates [3]	$45, 076, 662	$3, 851, 544	$2, 410, 284	$1, 441, 260	[2] $41, 225, 118
(11) Less: revenues required to produce 4.07 percent return on resale service (line 1)	44, 676, 153	3, 451, 035	2, 009, 775	1, 441, 260	[2] 41, 225, 118
(12) Indicated reduction in resale revenues	400, 509	400, 509	400, 509	----------	----------

[1] Rate of return on service to REA cooperatives.

[2] Actual "other than resale service" revenues: Sales of energy of $41,065,444 plus other operating revenues of $159,674.

[3] FPC rate No. 1 applied to Dover Air Force Base.

Source: Exhibit 39 revised, schedule 10.

APPENDIX B

DOCKET No. E-7114, ET AL.

Delaware Power and Light Co. and subsidiaries

[Annual reduction in resale revenues to produce 4.64 percent rate of return [1] using 48 percent FIT rate (47.483 percent effective rate), 12 months' period ended June 30, 1963]

	Resale service				
	Total	Total resale service	Tariff customers	REA co-ops	Other than resale service
(1) Revenues required to produce 4.64 percent return on resale service	$44,847,636	$3,622,518	$2,181,258	$1,441,260	[2] $41,225,118
(2) Less: Cost of service, 48 percent FIT rate	42,895,229	4,029.607	2,340,625	1,688,982	38,865,622
(3) Changes in cost of service	1,952,407	(407,089)	(159,367)	(247,722)	2,359,496
(4) Percent of revenues retained after taxes (schedule 11—exhibit 39 revised)	----------	----------	50.4207	50.6779	50.2582
(5) Adjustment to 6 percent return (line 3 times line 4)	$979,788	($205,894)	($80,354)	($125,540)	$1,185,651
(6) Return at 6 percent (schedule 4, p. 1—exhibit 39 revised)	9,370,279	908,479	518,453	390,026	8,461,800
(7) Adjusted return (line 5 plus line 6)	10,350,067	702,585	438,099	264,486	9,647,482
(8) Rate base (schedule 4, p. 1—exhibit 39 revised)	156,171,325	15,141,458	8,641,003	6,500,455	141,029,867
(9) Rate of return, percent (line 7 divided by line 8)	6.63	4.64	5.07	4.07	6.84
(10) Revenues based on currently applied rates [3]	$45,076,662	$3,851,544	$2,410,284	$1,441,260	[2] $41,225,118
(11) Less: Revenues required to produce 4.64 percent return on resale service (line 1)	44,847,636	3,622,518	2,181,258	1,441,260	[2] 41,225,118
(12) Indicated reduction in resale revenues	$229,026	$229,026	$229,026	----------	----------

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[1] Rate of return on service to Total Resale Service.

[2] Actual "other than resale service" revenues: Sales of energy of $41,065,444 plus other operating revenues of $159,674.

[3] FPC rate No. 1 applied to Dover Air Force Base.

Before Commissioners: Lee C. White, Chairman; Charles R. Ross and David S. Black.

CRISP COUNTY POWER COMMISSION v. GEORGIA POWER COMPANY, DOCKET NO. E-7120 AND GEORGIA POWER COMPANY, DOCKET NO. E-7288

ORDER PROVIDING FOR FILING OF BRIEFS ON SETTLEMENT PROPOSAL; AND DIRECTING IMMEDIATE TEMPORARY EMERGENCY INTERCONNECTION AND SERVICE

(Issued April 22, 1966)

This order directs that briefs respecting a settlement proposal tendered in Docket No. E-7120 be filed by all parties within two weeks. The order also provides (in Docket No. E-7288) that, pending further consideration of the settlement proposal or other resolution of the merits of the proceeding, and in the light of information indicating the urgent need for an immediate temporary connection of electric facilities and rendition of emergency service by Georgia Power Company (Georgia Power) to Crisp County Power Com-

mission (Crisp County), Georgia Power be directed to institute such connection and service in the manner hereinafter provided.

On August 8, 1963, Crisp County filed a complaint with the Commission under Section 202(b) of the Federal Power Act in Docket No. E-7120 requesting the Commission to direct Georgia Power to interconnect with and sell and exchange energy with Crisp County. Crisp County presently operates in electrical isolation. Hearings on the complaint have been held and the issues have been briefed to the Presiding Examiner. On April 13, 1966, the Presiding Examiner certified to the Commission for its consideration a settlement proposal which had been filed on April 11, 1966, by Georgia Power and Crisp County.

Crisp County has not asked Commission permission for withdrawal of its complaint. Instead the letter accompanying the tender of the settlement proposal asks on behalf of Crisp County and Georgia Power that the Commission approve and adopt the settlement proposal by an appropriate order in Docket No. E-7120.

On April 15, 1966, the Commission staff filed a motion urging that we fix a period of 20 days for comment by all parties upon the merits of the settlement. The staff points out that in submitting the proposal, neither Georgia Power nor Crisp County had purported to show why its terms constituted an appropriate resolution of the issues in the proceeding and that the staff, itself, had not participated in the settlement conferences, and had not had time within the brief period subsequent to the filing of the proposal to evaluate the merits of the complex agreement in the light of the facts of record.

We believe that under the circumstances, it is both necessary and appropriate to provide an opportunity for preparation and filing of briefs by all parties on the merits of the settlement agreement before the Commission determines whether its approval and adoption would be a reasonable resolution of the proceeding instituted by Crisp County which has been already heard and briefed. We shall accordingly defer action upon the settlement proposal (as well as the ancillary motion of the staff to waive intermediate decision by the Examiner, which would be moot should we approve the settlement) until we can consider these further pleadings. However, we believe two weeks from the date of this order should be sufficient in which to prepare and file such briefs.

Reliable information coming to the Commission's attention[1] indicated that in the past year there have been seven outages on the Crisp County system resulting in loss of service to some or all customers served. Five of these outages lasted over an hour and one of those five lasted for over five hours. Two outages of 27 and 6 minute durations resulted in loss of service to the entire system. The five others all of which lasted over an hour deprived 500 to 2,000 customers of service.

We find that on the basis of the numerous service interruptions on the Crisp County system due to inadequate generating facilities under isolated operation, an emergency situation exists with respect to electric service to the customers of Crisp County. Available information indicates two alternative means of establishing such temporary interconnection: closure of existing switching facilities of Georgia Power Company at Cordele, Georgia, which are fed by the 66-mile Americus-Perry 46 kv circuit of Georgia Power,[2] or a temporary back-up service from Georgia Power's 46 kv Flint River circuit. The Commission believes that Georgia Power and Crisp County should be offered the opportunity in the first instance to determine if these or other alternative connections will best meet the emergency situation and to agree upon terms of the financial and operating agreement between them in effecting the temporary emergency interconnection and service hereinafter directed.

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[1] Outages on May 10, June 3 and August 18, 1965, are indicated by the record in Docket No. E-7120 (Tr. 100, 102 and 99). An engineer in the employ of Crisp County has advised the Commission staff of four other outages which occurred subsequent to the closing of the record on February 5, March 7, 25 and 28, 1966. For more details on these seven outages see Appendix A to the Staff Comment and Motion filed April 15, 1966, in Docket No. E-7120.

Nothing contained herein shall be construed as passing upon the issues raised in the pending proceeding in Docket No. E-7120 initiated by Crisp County against Georgia Power pursuant to Section 202(b) of the Federal Power Act. The temporary emergency interconnection directed herein in Docket No. E-7288, may be modified or removed after the Commission has resolved the issues pending in Docket No. E-7120.

The Commission finds:

(1) An immediate temporary emergency interconnection between Crisp County and Georgia Power at Cordele, Georgia, or from the 46 kv Flint River circuit is necessary and appropriate and in the public interest for the purposes of the Federal Power Act, particularly Section 202(c), to assure adequate electric service to Crisp County's customers.

(2) The settlement proposal in Docket No. E-7120 is so complex that the Commission deems it advisable to defer passing thereon until after a period elapses for preparation of briefs and Commission consideration of such briefs.

The Commission orders:

(A) Georgia Power shall within seven days hereafter establish temporary emergency interconnection of its electric facilities with those of Crisp County so as to provide emergency back-up service capacity to the Crisp County system until further order of the Commission.

(B) Georgia Power shall notify this Commission when the temporary interconnection ordered herein is established and operative.

(C) This temporary interconnection and emergency service shall be rendered in accordance with the terms and conditions as shall be agreed to between Georgia Power and Crisp County. If no agreement is reached, the temporary interconnection and service shall be subject to such terms and conditions as may be fixed by supplemental order of the Commission pursuant to Section 202(c) of the Federal Power Act.

(D) All parties shall file with this Commission within two weeks from the issuance of this order their briefs with respect to the settlement proposal certified to the Commission by the Presiding Examiner on April 13, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EMPIRE DISTRICT ELECTRIC COMPANY, DOCKET NO. E-6711

DETERMINATION OF ANNUAL CHARGES FOR HEADWATER BENEFITS

(Issued April 25, 1966)

This order, issued under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)), determines that the United States' Beaver and Table Rock headwater improvements in the White River basin in Missouri did not provide benefits to the Empire District Electric Company's Ozark Beach hydroelectric development, Project No. 2221, during calendar year 1965.

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[2] There had been an interconnection between Georgia Power and Crisp County at Cordele prior to January 1961. There is no record of any power supply failure prior to the discontinuance of this interconnection.

The Commission has determined Empire District's headwater benefits payments to the United States for the period of September 24, 1960 (when it is estimated that the Ozark Beach development first received benefits from the Table Rock project), through December 31, 1964. By order of April 30, 1965, the Commission determined that Empire District's payment for the period through December 31, 1963, to be $123,110 (33 FPC 911). By order of September 16, 1965, 34 FPC 858, the Commission determined that because of the filling of the Beaver reservoir, the Federal headwater improvements did not provide benefits to the Ozark Beach development for calendar year 1964.

Studies indicate that average annual generation of the Ozark Beach development without upstream regulation would be about 58.4 million kilowatt-hours. Empire District has accepted this figure for a base on which to estimate energy gains in 1965 and subsequent years and has stated this acceptance in a letter dated March 16, 1965. Empire District will pay for benefits estimated by subtracting 58.4 million kilowatt-hours from the actual generation produced during the year in question. When this difference is negative, it will be carried over as an offset against positive amounts in subsequent years. Over a period of years, it is anticipated that the payments to the United States will, on the average, be the same as if based on the staff's estimate of average annual energy gains resulting from upstream regulation, which is about 31 million kilowatt-hours.

The Ozark Beach development generated 55.846 million kilowatt-hours in calendar year 1965. Hence, 2.554 million kilowatt-hours (58.400 million less 55.846 million) will be carried over as an offset against future gains. It is noted that without the continued filling of the Beaver development, the Ozark Beach development would have produced an additional 20 million kilowatt-hours. The gain, in that case, would have been about 17.4 million kilowatt-hours (75.8 million minus 58.4 million).

The Commission determines:

The United States Beaver and Table Rock headwater improvements in the White River basin in Missouri did not provide benefits to the Empire District Electric Company's Ozark Beach hydroelectric development, Project No. 2221, during calendar year 1965.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP66-281

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 26, 1966)

On March 4, 1966, Eastern Shore Natural Gas Company (Applicant), filed in Docket No. CP66-281 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of metering, regulating and connecting facilities for the transportation and delivery of gas on an interruptible basis to Standard Bitulithic Company (Standard), all as more fully set forth in the application.

Applicant proposes to tap its 6-inch pipeline at Mt. Pleasant, Delaware, and provide a metering and regulating station for the transportation and delivery of gas on an interruptible basis to Standard for use in the processing of asphalt paving. The proposed delivery point will make connection with a 2-inch pipeline to be constructed at the expense of Standard in order to connect the gas supply to its plant located approximately 1400 feet from Applicant's 6-inch line.

The use of gas by Standard will be limited to the summer and fall months of the year. During these periods the maximum daily volume of gas to be consumed by Standard is estimated at 500 Mcf, while the total annual consumption is estimated at 22,500 Mcf. The application states that authorization for the proposed service will not affect Applicant's ability to supply service to its remaining customers.

The total estimated cost of Applicant's proposed meter and regulating facilities is $2,150, which cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G-12059, *et al.* (18 FPC 710).

(2) The proposed construction and operation of facilities and transportation and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b) (c)(1), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-287

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 26, 1966)

On March 9, 1966, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-287 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring and regulating station to provide a supplemental delivery point for the direct sale and delivery of natural gas to Phelps Dodge Corporation (Phelps Dodge), an existing industrial customer, as more fully set forth in the application.

Pursuant to a Gas Sales Contract dated December 4, 1961, Applicant presently sells and delivers up to 24,277 Mcf per day of natural gas on a firm basis to Phelps Dodge for use in the latter's mining and related operations near Morenci, Arizona. Phelps Dodge's estimated peak day and annual requirements for the new installation are estimated to be 43 Mcf and 6,600 Mcf, respectively. There will be no increase in the contract demand.

The proposed new delivery point is to provide service to Phelps Dodge's new administration building located approximately 0.4 miles upstream from the existing delivery point. Phelps Dodge has requested the additional point of delivery since to utilize the existing one would require Phelps Dodge to construct a pipeline either across or round slag and tailing dumps to connect the administration building to existing facilities.

The estimated cost of construction is $4,557, which will be financed from current working funds.

Due notice of the filing of the application was published in the Federal Register on March 25, 1966 (31 F.R. 4978). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on April 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof, and the transportation of natural gas proposed, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

(D) The certificate issued by paragraph (A) above shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet future increases in their requirements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LUCY G. MOSES, DOCKET NO. CS66-6; HENRY AND LUCY MOSES FOUNDATION TRUST, CS66-7; BANKERS TRUST COMPANY AS TRUSTEE OF WILLIAM L. HERNSTADT 1950 TRUSTS, CS66-8; ESTATE OF WILLIAM L. HERNSTADT, DECEASED, CS66-9

ORDER DENYING REHEARING

(Issued April 26, 1966)

On April 4, 1966, Hunt Oil Company (Hunt) filed its application for rehearing and reconsideration of the Commission order of March 4, 1966, 35 FPC 331, which denied Hunt's petition for leave to intervene to protest the granting of small producer certificates in the proceedings listed in the caption. Said order stated that the facts were not as stated in Hunt's petition to intervene, nor was Hunt pursuing the proper remedy.

In its application for rehearing and reconsideration Hunt has introduced no new arguments or new facts which would affect in any way the determination set forth in the order of March 4, 1966. The only additional facts alleged have to do with Hunt's cost of processing, and that is not relevant in this proceeding. The motion for rehearing and reconsideration is denied.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing and reconsideration filed by Hunt Oil Company present no facts or legal principles which would warrant any change or modification in the Commission's order of March 4, 1966.

The Commission orders:

The application of Hunt Oil Company for rehearing and reconsideration of the order of March 4, 1966 is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-210

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 26, 1966)

On February 15, 1966, Northern Natural Gas Company (Petitioner) filed in Docket No. CP65-210 a petition to amend the certificate of public convenience and necessity issued in said docket on May 25, 1965, 33 FPC 1071, by deleting authorization to construct and operate measuring and regulating facilities authorized for the delivery of natural gas to the Golden West Grain Company (Golden West), Rogers, Nebraska, as more fully set forth in the petition to amend.

In the certificate issued May 25, 1965, Petitioner was authorized to construct and operate facilities to establish five new delivery points for the sale of natural gas to American Gas Company and Petitioner's Peoples Natural Gas Division (Peoples) for resale. Four of the five delivery points authorized by the certificate have been completed.

Construction of the delivery point for Golden West has not been commenced. Peoples has advised Petitioner that Golden West has not installed the fuel line and burner facilities which are necessary to commence natural gas service. Peoples is uncertain when or whether these facilities will be constructed. Petitioner therefore asks that the facilities for the delivery point for Golden West be deleted from the authorization in this docket.

Petitioner states that if Golden West installs its required facilities during 1966, then Petitioner will construct and operate measuring and regulating facilities for service to Golden West pursuant to the 1966 "budget-type" certificate issued to Petitioner in Docket No. CP66-98 on December 13, 1965, 34 FPC 1454.

Due notice of the filing of the petition to amend was published in the Federal Register on March 4, 1966 (31 F.R. 3434). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued on May 25, 1965, in Docket No. CP65-210 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Northern Natural Gas Company in Docket No. CP65-210 on May 25, 1965, is amended by deleting therefrom the authorization for the construction and operation of the measuring and regulating facilities for the delivery point to Golden West Grain Company, Rogers, Nebraska, as described above and as more fully described in the petition to amend.

(B) In all other respects the certificate, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY, PROJECT NO. 2393

ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued April 28, 1966)

Application was filed on April 4, 1966 by Columbus and Southern Ohio Electric Company, permittee for proposed Project No. 2393, for a six-month extension of the period of the permit. The preliminary permit was issued by the Commission on May 11, 1964, 31 FPC 1147, for a period of 24 months, effective as of May 1, 1964.

In support of its application, the permittee advises that such an extension would enable its consulting engineers to complete plans for a new layout based on a new study suggested by the Corps of Engineers and would provide additional time within which to conduct a full scale test at the site of the effect of ponding on pollution and possible reduction in reaeration due to the installation of the generating facilities.

The Commission finds:

It is not inconsistent with the public interest to extend the period of the preliminary permit as applied for.

The Commission orders:

The period of the preliminary permit for proposed Project No. 2393, is hereby extended for a period of six months through October 31, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–11217, G–13734, G–14115, G–15314, G–15315, G–18206, G–18207, G–18215, G–18417 AND G–18418

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued April 28, 1966)

On March 29, 1966, Phillips Petroleum Company (Phillips) filed a document styled an Application For Rehearing[1] of the Commission's order herein of March 1, 1966, 35 FPC 305, denying Phillips' petition for consolidation of proceedings, termination of proceeding and termination of proceedings in part. Phillips requests reconsideration of said order only insofar as it denies termination of the proceeding in Docket No. G–11217 and termination in part of the other above-docketed proceedings.[2] These proceedings relate to spiral escalation and favored-nation rate increases[3] filed by Phillips for sales of natural gas to El Paso Natural Gas Company (El Paso), and were based on El Paso's increased rates. Upon settlement of El Paso's rate proceedings, Phillips filed recomputed rates reflecting the downward spiral effect of El Paso's reduced rates and these rates were accepted subject to further order of the Commission, 31 FPC 774. On March 1, 1966, we approved a settlement proposal of other producers whose increased rates were filed under favored-nation clauses and were based directly or indirectly on Phillips' spiral increases. *Amerada Petroleum Corporation, et al.*, Docket No. G–16117, *et al.* Phillips requests reconsideration of the order of March 1, 1966, herein denying termination of the contractual issues in these proceedings as a part of the Amerada, *et al.* settlement.

Phillips asserts two grounds for termination of the contractual issues in these proceedings. It states that refunds to El Paso are flowed through to its customers without the filing of decreased rates by El Paso and therefore there is no basis for a further reduction of Phillips' rates under the downward spiral theory. Second, Phillips asserts that the Amerada settlement established rate levels which are in excess of Phillips recomputed rates and contractually justify Phillips' rates under favored-nation clauses in its contracts.

We deem it inappropriate to consider Phillips' contentions in the context of a settlement proposal of other respondents where the parties did not consider Phillips' current assertions. We shall afford Phillips a hearing at which it may adduce evidence and make the legal arguments which it states will require termination of the contractual issues, or if it so desires, a settlement conference of the parties may be convened to consider Phillips' contentions.

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[1] An application for rehearing with respect to Commission action on an interlocutory order, such as involved here may not properly be filed (Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e)). The instant filing has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

[2] Aside from the contractual question, Phillips' rates are also subject to a determination of their justness and reasonableness under Section 4(e) of the Natural Gas Act, with the exception of those involved in Docket No. G–11217.

[3] The favored-nation increases involve a very small portion of the total amount involved here.

The Commission orders:

For the reasons set forth above, Phillips' motion for reconsideration is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER EXTENDING TIME FOR CONSIDERATION OF QUALITY STATEMENTS

(Issued April 29, 1966)

The Commission in paragraph (F)(1) of Opinion No. 468, as amended by Opinion No. 468-A, 34 FPC 159, 1068, required the producer respondents therein to submit a quality statement with respect to each rate schedule pertaining to sales of gas from the areas covered by that decision. The time period for filing these quality statements was extended to March 21, 1966, by the Tenth Circuit in its stay order issued January 20, 1966 in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*). A similar time extension was granted to any producer respondent which had not obtained a court stay of the Permian Opinion by the Commission in its February 11, 1966 order, 35 FPC 211. It was also provided in paragraph (F)(2) of the opinion that where the quality statement reflected full agreement between seller and purchaser, it was to be deemed accepted unless the Commission within 60 days after such filing ordered otherwise.

In passing on the propriety of the quality statements it is important to examine and compare the underlying principles and methods utilized in arriving at the various agreed upon adjustments. We need additional time to consider these matters, particularly with respect to those quality statements filed in advance of the March 21 deadline. For this reason we are extending the period of time for consideration of the quality statements thus far submitted to June 30, 1966.

The Commission orders:

The time for consideration by the Commission of quality statements heretofore filed by producer respondents in this proceeding is extended to June 30, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP66-253

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1966)

On February 3, 1966, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP66-253 an application pursuant to Section 7(c) of the Natural

Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the period extending from April 1, 1966, through March 31, 1967, and the operation of certain natural gas facilities for the sale of natural gas to existing distributors for resale and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved. all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of twenty new meter stations and main line and lateral taps at new delivery points in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission. Further, Applicant proposes to construct facilities necessary for a maximum of five miscellaneous rearrangements; pipe utilized for such rearrangements will not exceed a diameter of 26-inches and a length of five miles.

The total cost of facilities proposed under this application will not exceed a maximum of $500,000 and the total deliveries to any one distributor will not exceed a maximum of 100,000 Mcf of natural gas per year.

Applicant request waiver of the provisions of Section 157.7(c)(3)(i) of the Regulations which restricts the total estimated cost of the gas-sales or transportation facilities proposed in an application filed pursuant to Section 157.7(c) to $300,000.

Applicant states that one of the contemplated rearrangements involves a portion of its North Denver lateral at an estimated cost of $240,000. The rearrangement is necessary because of the residential development of an area traversed by said lateral. Such estimated cost is 48 percent of the total estimated cost of the proposals in the subject application. Accordingly, Applicant requests waiver of the provisions of the above-described section of the Regulations in order to be able to expend funds (estimated at $500,000) sufficient to construct the maximum facilities proposed herein.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to the period extending from April 1, 1966, through March 31, 1967, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with the total deliveries to any one distributor not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter is granted on the express conditions that any interruptible service authorized should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(9) Good cause has been shown for waiver of the provisions of Section 157.7(c)(3)(i) of the Commission's Regulations under the Act.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Colorado Interstate Gas Company, to construct during the period extending from April 1, 1966, through March 31, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities for miscellaneous rearrangements and to sell natural gas to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the period extending from April 1, 1966, through March 31, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $500,000, with the total deliveries to any one distributor limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued is granted on the express condition that any interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) Applicant's request for waiver of the provisions of Section 157.7(c)(3)(i) of the Commission's Regulations is granted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr.. Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65-102; ATLANTIC SEABOARD CORPORATION, CP65-122; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP65-181; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY, AND NORTH PENN GAS COMPANY, CP65-182; UNITED FUEL GAS COMPANY, CP65-198

ORDER PERMITTING INTERVENTION, SEVERING PROCEEDINGS, AND SETTING DATES FOR FILING OF EVIDENCE AND HEARINGS

(Issued April 29, 1966)

On March 25, 1966 the United States Department of Health, Education, and Welfare filed a motion for leave to intervene out of time and a petition to intervene in the above-entitled proceedings along with a proposed brief. Answers to the motion and petition to intervene were filed by Fuels Research Council, Inc., National Coal Association and United Mine Workers of America (coal interests) and by the staff of this Commission.

The Department states that its interests and the public would be served by its intervention to insure that its views are fully and accurately before the Commission. The Department does not request that the record be reopened but states that it seeks participation limited to the right to file briefs with the Presiding Examiner, to take exceptions to the Examiner's Decision, to file replies to exceptions, and to participate in oral argument, if any, before the Commission. Coal interests and the staff both oppose the motion for leave to intervene because it was filed out of time and allege that no justification has been shown for the Department's failure to intervene in a timely manner. The staff suggests, however, that the Department be permitted to appear as *amicus curiae* in this proceeding drawing a parallel to the Commission's action in permitting *amicus curiae* participation by the Department in *Transwestern Pipeline Co., et al.*, Docket No. CP63-204, *et al.*, 35 FPC 334 (order issued March 4, 1966).

Section 1.8(d) of the Commission's Rules provides that petitions to intervene must be filed no later than the date fixed for the filings of petitions to intervene in an order or notice unless in extraordinary circumstances for good cause shown. On May 14, 1965 the Commission issued a notice of supplements and amendments to applications in these proceedings providing that petitions to intervene be filed on or before June 3, 1965. Hearings were held and the record was closed February 4, 1966. Initial briefs before the Presiding Examiner were filed March 18, 1966 and reply briefs were filed April 11, 1966. The Department has not alleged that it was not on notice of these proceedings in order to have filed a timely petition to intervene. Nonetheless, for the reasons stated below, it appears appropriate to permit the Department's intervention provided that it present evidence to support its position.

The issue to which the Department addresses itself is the air pollution issue related to that portion of the application of Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. CP65-181 in which Transco proposes to deliver to Consolidated Edison Company of New York, Inc. (Con Ed) 55,000 Mcf per day of gas under Transco's CD-3 Rate Schedule in substitution for 55,000 Mcf per day of storage service presently being rendered under its GSS rate schedule. That service is presently being rendered under temporary authority issued March 1, 1966, 35 FPC 306. In the order issuing such temporary authority the Commission observed that it was Transco's position that the proposed service to Con Ed was unrelated to the other issues in the consolidated proceedings.[1] Because of the fact that the proposed service to Con Ed is unrelated to the other issues, severance of that question would not delay a decision on the competitive question and other questions involved in the consolidated proceeding. Since the service to Con Ed will be rendered until March 31, 1967 under temporary authority there is no pressing need for an early decision on that aspect of the proceeding. Accordingly, any delay in an ultimate decision on that aspect caused by the further hearing prescribed herein will not affect deliveries to Con Ed and, because of the severance ordered herein, will not delay consideration of the other aspects of the proceeding.

Presentation of evidence by the Department may assist the Examiner and the Commission in evaluating the proposal of Transco to render additional service to Con Ed. The Department in its brief states:

> While we believe that, on the record of this proceeding, there would be a beneficial effect for air pollution control as a consequence of the proposed gas use, we are not persuaded *** that such use would constitute the most effective use for air pollution control purposes. (footnote omitted)
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> * * * * * * *
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> The proposed additional 55,000 Mcf/d could make a significant reduction in SO_2 pollution in the amount of 25,000 tons/year. We have reservations, however, that the proposed use of the gas, as outlined by Con Ed, in units 1 and 2, is the most effective use of this fuel by Con Ed for alleviation of air pollution, already at an undesirable level in New York City. Consequently, although we in general favor any reasonable steps that may be taken to alleviate the air pollution problem in New York City, we would suggest that, insofar as the granting of this application turns on the air pollution problem, the proposed additional supply of gas under this application be approved only if suitable assurances are obtained that it will be used by Con Ed in the most productive way to alleviate the air pollution problem in New York City

We desire that the Department present evidence to support its position that the use of natural gas would not only be beneficial for air pollution control but also that approval of the proposed service to Con Ed should be granted only if suitable assurances are obtained that the additional gas will be used by Con Ed in the way best designed to alleviate New York City's air pollution problem.

In order that a complete record will be before the Presiding Examiner and the Commission with regard to the Department's position that natural gas should be used in a manner other than that proposed by Con Ed, it is necessary that the Department's motion for leave to intervene out of time be granted, that its petition to intervene be granted, that the proceedings be reopened and further hearing be held so as to enable the Department to present evidence to support its position in this proceeding.

The Commission finds:

(1) Although the petition to intervene filed March 25, 1966 by the U.S. Department of Health, Education, and Welfare was not filed within the time

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[1] In addition to the service proposed to Con Ed, Transco proposes additional natural gas service in Docket No. CP65–181 to other existing customers and to two new customers, Commonwealth Natural Gas Company and Washington Gas Light Company, both of whom presently purchase natural gas solely from Atlantic Seaboard Corporation. Atlantic Seaboard proposes competitive service to those customers in Docket No. CP65–122, consolidated herein.

required by Section 1.8(d) of the Commission's Rules of Practice and Procedure (18 CFR 1.8(d)), good cause exists to permit the late filing.

(2) It is desirable and in the public interest to allow the above-named petitioner to intervene in these proceedings in order that petitioner may establish the facts and the law from which the nature and validity of alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The above-named petitioner is hereby permitted to become an intervener in these proceedings subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such intervener shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition to intervene; and *provided, further,* that the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding, and also *provided* that petitioners shall file evidence as ordered herein.

(B) That portion of the application of Transcontinental Gas Pipe Line Corporation in Docket No. CP65–181 related to the proposed substitution of 55,000 Mcf per day of CD–3 service to Consolidated Edison Company of New York, Inc. for a like amount of GSS service presently authorized is hereby denominated Phase II of such application.

(C) To the extent possible, the Presiding Examiner is directed to issue an initial decision on the remaining issues in this consolidated proceeding which are unrelated to those matters to be considered in the Phase II proceeding prior to an initial decision in the Phase II proceeding.

(D) The evidence heretofore submitted relating to the proposed substitution of service to Consolidated Edison Company of New York, Inc. shall be considered part of the record in the Phase II proceeding.

(E) On or before May 16, 1966, the United States Department of Health, Education, and Welfare shall file and serve upon all parties direct evidence to support its position and contentions in this proceeding. Any other parties desiring to present direct evidence in this Phase II proceeding shall also file and serve evidence on or before that date. Presentation of answering evidence shall be at such time as may be specified by the Presiding Examiner.

(F) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held May 23, 1966, at 10:00 a.m. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the matters set forth in the instant order or any further order issued in the instant proceedings prior to said note of hearing.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E–7274

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued April 29, 1966)

Community Public Service Company (Applicant), a public utility incorporated under the laws of the State of Texas and doing business in the States of New Mexico and Texas, filed an application on February 28, 1966, seeking authority pursuant to Section 204 of the Federal Power Act to issue $5,000,000 principal amount of First Mortgage Bonds.

Applicant proposes to offer the bonds for sale in accordance with the competitive bidding requirements of the Commission's Rules and Regulations. The interest rate, the price received and the costs of money will be determined by the most favorable bid received and accepted. The Bonds are to be dated as of May 1, 1966 and are to mature on May 1, 1996.

The new Bonds are to be issued as a new series of First Mortgage Bonds under and secured by an Indenture of Mortgage and Deed of Trust dated as of November 1, 1944, as amended and supplemented and to be further amended by a Tenth Supplemental Indenture, to be dated as of May 1, 1966, creating the new Bonds, between the Applicant and Continental Illinois National Bank and Trust Company of Chicago, Trustee.

According to the application the Bonds are to be issued to provide funds for the payment of short-term bank notes which at the time of the filing of the application totaled approximately $2,000,000, and for payment of $500,000 of additional short-term notes which Applicant expects to issue prior to the sale of the new Bonds. Proceeds from the sale of the Bonds will also be used to provide for a partial payment on the Applicant's 1966 construction program which will require an estimated expenditure of $8,875,000. The principal item in the Applicant's program is the installation of a 22 megawatt steam electric generating unit in the Applicant's power plant at Lordsville, New Mexico, which will require a total estimated expenditure of $4.2 million.

The Applicant intends on or about May 4, 1966, to invite sealed, written bids for the purchase of the $5,000,000 new Bonds. The Public Invitation for Bids will contain the following principal provisions:

> Each bid, which may be made by a single bidder or by a group of bidders, must be for the purchase of all the Bonds. Bids must be presented to the Applicant at 1 Chase Manhattan Plaza, Room 2414, New York, N.Y., before 11:00 A.M., New York Time, on May 11, 1966, and must be accompanied by deposits of $150,000.
>
> Each bid shall specify (a) the coupon rate of the Bonds, which rate shall be a multiple of ⅛ of 1%; and (b) the price (expressed as a percentage of the principal amount, exclusive of accrued interest) to be paid to the Applicant for the Bonds, which price shall not be less than 100% or more than 102¾ of the principal amount of the Bonds, and that accrued interest on the Bonds from May 1, 1966 to the date of payment therefor and delivery thereof will be paid to the Applicant by the purchaser or purchasers of the Bonds.
>
> Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Public Invitation for Bids, it will accept the bid which provides for the lowest cost of money.

Written notice of the application has been given to the Texas Railroad Commission, New Mexico Public Service Commission and to the Governors of those States. Notice has also been published in the Federal Register on March 12, 1966 (31 F.R. 4363), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before March 25, 1966 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a Texas corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the

Commission's order issued April 24, 1963, *Community Public Service Company* (29 FPC 829).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given on this application is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

VILLAGE OF ENFIELD, ILLINOIS AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66-272

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 29, 1966)

On February 21, 1966, the Village of Enfield, Illinois (Applicant) filed in Docket No. CP66-272 an application pursuant to Section 7(a) of the Natural

Gas Act for an order directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its facilities with the facilities proposed to be constructed by Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the village and vicinity, all as more fully described in the application.

Specifically, Applicant proposes an interconnection between its proposed 3-inch pipeline and Respondent's transmission pipeline at a point approximately seven miles south of Applicant's proposed town border station. Applicant will also construct and operate a distribution system to serve all natural gas customers in the village and vicinity and along the proposed 3-inch pipeline lateral

The total estimated volumes of natural gas required to meet Applicant's annual and peak day sales for the initial three year period of proposed operations are as follows:

Mcf	First year	Second year	Third year
Annual	43,518	52,379	61,240
Peak day	504	631	758

The total estimated cost of the pipeline lateral and distribution facilities to be constructed by Applicant is $280,000, which is to be financed by the sale of gas revenue certificates.

The appropriate ordinance authorizing the village to acquire, construct, own and operate a municipal gas utility was passed by the village electorate on October 30, 1965.

Applicant proposes to purchase its natural gas requirements under Respondent's FPC SGS–B Rate Schedule.

Respondent filed an answer to the application on March 28, 1966, indicating no objection to rendition of the proposed service.

Due notice of the filing of the application was published in the Federal Register on March 9, 1966 (31 F.R. 4177). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued on March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(2) Applicant is a municipal corporation in the State of Illinois and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 758 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 758 Mcf of natural gas per day to Applicant under Respondent's FPC SGS-B Rate Schedule, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP66-270

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 29, 1966)

On February 18, 1966, Illinois Power Company (Applicant), filed in Docket No. CP66-270 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the Village of Royal and environs, Champaign County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct a distribution system in the community of Royal and a 2-inch lateral pipeline, 2.9 miles in length, extending in a westerly direction from Respondent's transmission line to said distribution system. Applicant also proposes that Respondent construct a sales meter station to service the proposed interconnection of facilities.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

Mcf	First year	Second year	Third year
Annual	7,220	9,426	11,719
Peak day	75	100	127

The total estimated cost of Applicant's proposed transmission and distribution systems is $63,350, which cost will be financed with funds on hand.

On March 21, 1966, Respondent filed an answer to the application which indicated Respondent had no objection to rendering service and requesting that Applicant be required to be prepared to receive service within 9 months of the date of the order. The application states that Applicant expects to have its facilities constructed within 8 months of the date of issuance of the order.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on March 9, 1966 (31 F.R. 4174). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 127 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) The requirement that Respondent serve Applicant as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in the Village of Royal, Illinois, and environs, within nine months from the date of issuance of this order.

The Commission orders:

(A) Trunkline Gas Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell up to 127 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Trunkline in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in the proceeding. Such service shall be rendered pursuant to Trunkline's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within nine months from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS GAS AND ELECTRIC COMPANY, DOCKET NO. E-7279

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued April 29, 1966)

Kansas Gas and Electric Company (Applicant), filed an application on March 22, 1966, seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue $16,000,000 principal amount of First Mortgage Bonds.

Applicant is incorporated under the laws of the State of West Virginia and is engaged in the generation, purchase, transmission, distribution and sale at wholesale for resale of electric energy in an area of approximately 8,100 square miles in southeastern Kansas.

The Applicant proposes to offer the Bonds at competitive bidding in accordance with the Commission's Rules and Regulations. The interest rate, the price received, and the cost of money will be determined by the most favorable bid received and accepted. The Bonds which are to be dated as of May 1, 1966 and are to mature on May 1, 1966, are to be issued under a Mortgage and Deed of Trust dated as of April 1, 1940 with Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Wesley L. Baker as Trustee, as supplemented by eight supplemental indentures and to be further supplemented by the Ninth Supplemental Indenture dated as of May 1 1966.

The Applicant intends on or about May 2, 1966, to invite sealed, written bids for purchase of the $16,000,000 new Bonds. The Statement of Terms and Conditions Relating to Bids contains the following principal provisions:

> Each bid must be for the purchase of all the Bonds and may be made by a single bidder or by a group of bidders. No bidder may submit or participate in more than one bid. Each bid must be delivered to the Applicant at Room 2033, Two Rector Street, New York, N.Y., before 11:00 A.M., New York Time, on May 10, 1966, and be accompanied by a deposit of $480,000.
>
> Each bid shall specify the interest rate to be borne by the Bonds, which rate shall be a multiple of ⅛th of 1%; and shall also specify the price to be paid to the Applicant, which price shall not be less than the principal amount of the Bonds and not more than 102¾% of such principal amount. Each bid shall provide that the purchaser or purchasers of the Bonds shall pay to the Applicant accrued interest on the Bonds from May 1, 1966, to the date of payment therefor and delivery thereof.
>
> Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions, it will accept the bid which provides for the lowest cost of money.

According to the application the proceeds from the issuance and sale of the Bonds will be used to pay off approximately $1.5 million in bank loans and to finance in part Applicant's construction program for 1966 and 1967 which is presently estimated at $40,000,000. The principal item in this program is the addition of a 380 mw unit at Applicant's Gordon Evans plant which will require an expenditure of $25.5 million. Other items in this program include $11.8 million for transmission facilities and $8.3 million for distribution facilities.

Written notice of the application has been given to the Kansas State Corporation Commission and the Governor of that State. Notice has also been published in the Federal Register on April 1, 1966 (31 F.R. 5271), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before April 21, 1966 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued December 31, 1959, *In the Matter of Kansas Gas and Electric Company*, Docket No. E-6914 (22 FPC 1191).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of

which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66–125

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1966)

On October 22, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66–125 an application[1] pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce and the construction of certain facilities in connection with a proposed interruptible sale to Marathon Oil Company (Marathon), all as more fully set forth in the application.

Applicant proposes to construct and operate a measuring and regulating station to be located in Miami County, Kansas, to serve Marathon pursuant to a contract between Applicant and Marathon dated July 1, 1965. Under the contract, Applicant is not obligated to deliver in excess of 800 Mcf of natural gas per day.

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[1] Supplement to the application filed February 3, 1966.

Marathon proposes to use the gas in the secondary recovery of oil. The process involves the injection of an air-oil mixture into old oil wells. The air-oil mixture is ignited, heating the formation and driving the oil to the pumping wells. Marathon will use the natural gas for inspection of the inflammable mixture into the formation.

The estimated cost of the proposed facilities is $6,100, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities and the transportation of natural gas, as hereinbefore described and as more fully described in the application, as supplemented, and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-228

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1966)

On January 17, 1966, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-228 an application, supplemented on March 28, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a supply pipeline extending from Applicant's existing Western Oklahoma Supply Line (the Elk City Line) approximately 73.3 miles through Dewey and Roger Mills Counties, Oklahoma, to the eastern portion of Hemphill County, Texas, as more fully set forth in the application.

Applicant has entered into certain gas purchase contracts which are described as follows:

Producer	Date of contract	Location	Producer application
Phillips Petroleum Co	Nov. 11, 1965	Hemphill County, Tex	CI66-559.
Sun Oil Co	Jan. 8, 1966	Ellis County, Okla	CI66-720.
Shell Oil Co	Jan. 20, 1966	Hemphill County, Tex., and Ellis County, Okla.	CI66-988.

Applicant proposes to construct and operate a total of approximately 73.3 miles of pipeline which will consist of 16-inch to 24-inch pipeline extending in a westerly direction through Dewey and Roger Mills Counties, Oklahoma, from the Elk City Line and a Y of 8-inch and 10-inch pipeline in Hemphill County, Texas.

Applicant has entered into certain gas purchase contracts which are described under the contracts described above. Applicant also anticipates that a rapid build-up of additional supplies from independent producers along the route of the proposed supply pipeline will occur. Applicant states that this expectation is based upon extensive exploration and development activity now being carried on which Applicant anticipates will be stimulated by the proposed pipeline.

The estimated cost of the pipeline to be constructed by Applicant is $4,810,000, which will be financed from general sources available to Applicant. No new permanent financing is anticipated.

Due notice of the filing of the application was published in the Federal Register on January 29, 1966 (31 F.R. 1219). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued September 23, 1942, Docket No. G-200 and G-207 (3 FPC 273).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation as authorized in paragraph (A) above, as provided in paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ROCKY MOUNTAIN POWER COMPANY, PROJECT NO. 2289

ORDER VACATING PRESIDING EXAMINER'S RULING AND GRANTING MOTION TO STRIKE

(Issued April 29, 1966)

On April 14, 1966, Commission Staff Counsel filed a motion to reverse the ruling of the Presiding Examiner denying staff motion filed March 18, 1966, to strike certain material submitted as exhibits in this proceeding. The Commission's order of August 19, 1965, 34 FPC 539, fixing hearing and prescribing procedure provides in subparagraph 6 of paragraph B that "no exhibits, except those of which official notice may properly be taken shall contain narrative material other than brief explanatory notes". The filings submitted by Rocky Mountain Power Company (Applicant) on March 1, 1966, contain narrative material submitted as part of its exhibits in violation of the Commission's procedural order. The procedural order also provides that all of the testimony except exhibits shall be in question and answer form.

The procedure prescribed by the Commission's order of August 19, 1965, is intended to eliminate any cause which might otherwise exist for a protracted hearing by requiring all parties to submit a full and complete direct case in writing as clearly as possible and in advance of the hearing in order to eliminate the need for recesses and extensive cross-examination. The situation presented by Staff's motion, and by the Interveners which have joined in that motion, shows the need for the procedure prescribed by the Commission.

The Applicant indicated at the prehearing conference (Tr. 60) and in its response filed April 25, 1966, that it is prepared and is willing to resubmit its direct case pursuant to the Commission's procedural order.

The Commission finds:

It is appropriate and in the public interest in carrying out the provisions of the Federal Power Act that the aforesaid motion to strike be granted, and that the Applicant be granted a reasonable period to resubmit its direct case.

The Commission orders:

(A) The aforesaid motions to reverse ruling of presiding examiner and to strike certain material submitted as exhibits by the Applicant as part of the direct case, are granted.

(B) The Applicant is given until May 23, 1966, to resubmit his direct case in accordance with the aforesaid procedure.

(C) The Interveners and Commission Staff are given until June 13, 1966, to file their direct cases in accordance with the aforesaid procedure.

(D) Motions to strike shall be filed with the Presiding Examiner by June 20, 1966, with replies to such motions to be filed by June 27, 1966.

(E) The hearing be held beginning on July 6, 1966.

Chairman White *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66-43

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1966)

On August 9, 1965, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP66-43 an application, as supplemented on November 15, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, including facilities for liquefaction, storage and vaporization of natural gas, and storage service to certain of its customers under Applicant's proposed FPC Storage Service Rate Schedule, all as more fully set forth in the application, as supplemented, in this proceeding.

Specifically, Applicant proposes to construct and operate the following facilities during a four year period ending in 1969:

1. A total of 19.33 miles of 30 and 36-inch mainline pipeline loops between Connellsville, Pennsylvania, and Lambertville, New Jersey.
2. An additional 8-inch meter run in the existing metering and regulating station for deliveries of natural gas to Algonquin Gas Transmission Company in Morris County, New Jersey.

3. Change impellers in the centrifugal compressors at the Armagh and Entriken compressor stations in Pennsylvania.

4. Facilities for additional development of the Accident Storage Field in Garrett County, Maryland, including 30 new wells, 22 miles of 4- to 8-inch gathering lines and 5,500 compression horsepower.

5. A liquefied natural gas (LNG) facility having a liquefication capability of 7,650 Mcf per day, a storage capacity of 2,040,000 liquefied Mcf and a vaporization capability of approximately 199,000 Mcf per day. Said facility will be located near the terminus of Applicant's existing pipeline system on Staten Island, New York.

Applicant proposes to utilize the subject facilities to provide service to the following customers under its proposed Storage Service Rate Schedule and to store for and deliver to them the following quantities of natural gas in accordance with the provisions of that rate schedule:

Customer	Volumes in Mcf at 14.73 psia	
	Maximum daily quantity	Storage volume
Algonquin Gas Transmission Co	38, 131	2, 669, 151
The Brooklyn Union Gas Co	51, 001	3, 570, 095
New Jersey Natural Gas Co	6, 120	428, 412
Public Service Electric and Gas Co	20, 401	1, 428, 038
Total	115, 653	8, 095, 696

The application indicates that gas will be injected into both the Accident Field and the LNG facility during off peak periods and withdrawn (and vaporized in the case of LNG) and delivered to customers during peak periods. Beginning in 1969, the estimated 153,000 Mcf proposed peak day storage service requirements will be met by 102,000 Mcf from LNG and 51,000 Mcf from the Accident Field. The proposed storage service will ultimately require annual deliveries of an estimated 1,122,000 Mcf from the LNG facility and an estimated 9,588,000 Mcf from the Accident Field.

Service under the proposed Storage Service Rate Schedule will be at the following three part rate:

MDQ charge: $1.35 per month per Mcf of MDQ.
Space charge: 1 cent per month per Mcf of Storage Volume.
Delivery charge: 2.5 cents per Mcf of Storage Service gas delivered.

The total estimated cost of the proposed facilities is $31,286,000, which cost will be financed initially by short-term revolving credit to be replaced later by long term debt or equity financing.

A number of petitions to intervene and a notice of intervention, as amended, have been filed herein. No request for formal hearing has been made in any of these filings, as amended, and no objection has been made to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on the various petitions and the notice, as amended, appears necessary.

After due notice, no other petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G-880 (6 FPC 148).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed storage service by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Texas Eastern Transmission Corporation, to construct and operate the proposed facilities and to render the proposed storage service as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the proposed storage service authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, in accordance with the schedule therefor as set forth in the application.

(D) Applicant shall submit in a form acceptable to the Commission annual reports showing the pertinent operating data and the experienced associated costs covering the facilities and service authorized for each of the first three full years of service.

(E) Applicant prior to commencement of construction of the LNG plant authorized hereby shall submit to the Commission for its approval, the detailed plans and specifications for the construction of said plant. Prior to the commencement operation of the plant, the Applicant shall submit to the Commission a statement attesting to the fact that the plant has been constructed in accordance with the detailed plans or specifications therefore approved.

(F) That in any rate proceeding commencing after the facilities proposed herein to be assigned to Storage Service deliveries have been certificated and transferred to gas plant in service, should the "test period" or any part thereof fall prior to the commencement of full utilization of such facilities, Applicant shall reflect revenues and costs based upon such full utilization.

(G) That Applicant shall not, in any rate proceeding, assess against any other class of service any deficiency in revenues under its Storage Service Rate Schedule below the cost of service associated with (i) the facilities proposed herein to be assigned to Storage Service deliveries, plus (ii) any additional facilities which may be required to provide the Storage Service deliveries.

(H) That appropriate costs of all Accident Field storage facilities properly allocable to Storage Service deliveries shall be subject to investigation and determination in a rate case or rate determination proceeding.

(I) The Accident Field maximum reservoir inventory shall not exceed 61,978,000 Mcf (@ 14.73 psia) of natural gas without further Commission authorization. Applicant shall continue to file such reports on the operation of this field as may now be required.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66–136

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 29, 1966)

On October 29, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66–136 an application as supplemented December 7, 1965 and February 3, 9, and 23, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of facilities for the development and operation of an underground natural gas storage reservoir located in Bienville and Bossier Parishes, Louisiana, and related facilities, all as more fully set forth in the appendix hereto and in the application.

Due to the declining local supply of gas available to Applicant in its Northern Area, consisting of its Tyler District and North Louisiana Area, it has become necessary for Applicant to make additional gas available in the Northern Area in the immediate future in order to meet its customer requirements. Applicant's study of this problem has caused it to conclude that the development and operation of the proposed storage reservoir would be the most efficient and economical way to make additional gas available to Applicant's Northern Area.

The Bistineau Gas Storage Field, which is the proposed storage area, is centrally located in Applicant's Northern Area and is near Applicant's Carthage-Sterlington 20-inch and 24-inch lines, which form a part of Applicant's high pressure interstate transmission system.

Applicant proposes to acquire the remaining gas reserves in the old, near-depleted Lake Bistineau Field for use as native cushion gas. Reserves were estimated on January 1, 1965, to be 4,945 MMcf recoverable out of 20,000 MMcf in place, both at 14.9 psia. In addition to acquiring the remaining gas reserves Applicant will also acquire certain facilities from the producers in the field. In its application United also proposes certain accounting for claimed costs of property and "Storage Rights" to be acquired. We are reserving determination of this proposed accounting to a later date. An order permitting and approving abandonment of service and facilities by the producers in the Lake Bistineau Field, Docket No. G-13633, *et al.*, is being issued concurrently herewith.

Beginning in 1966, Applicant proposes to inject gas annually during the period April through October. Applicant states that this would permit daily withdrawals from the storage field during the period November through March, through the 1969-1970 heating season, as follows:

Heating season:		*Withdrawals*
1967-68	Mcf	300, 000
1968-69	do	400, 000
1969-70	do	500, 000

The facilities to be constructed in connection with the development and operation of the project will be done in three phases during the years 1966 through 1969 and are described in the appendix hereto.

The total cost of Applicant's proposed project is approximately $30,782,000, which will be financed by retained earnings and by depreciation and amortization accruals and, to the extent necessary, from the sale of additional securities of Applicant to United Gas Corporation, its parent.

After due notice published in the Federal Register on November 17, 1965 (30 F.R. 14390), petitions for leave to intervene were filed by the Philadelphia Gas Works Division of The United Gas Improvement Company and by Natural Gas Pipeline Company of America on December 1, 1965. Neither petitioner opposes Applicant's proposals. A petition for leave to intervene filed by Memphis Light, Gas & Water Division, an agency of the City of Memphis, Tennessee on November 30, 1965, was withdrawn by letter dated March 11, 1966, on the condition that issuance of a certificate does not imply Commission approval of any method or procedure in the allocation of storage costs (agreed to by Applicant's letter of March 14, 1966). No notices of intervention, other petitions to intervene or protests to the granting of the application have been filed.

During the pendency of Memphis' petition for leave to intervene Applicant on December 7, 1965, filed an application for a temporary certificate * * * in order to permit it timely to construct and place in operation the facilities outlined in Phase I of the original application for construction and operation in the years 1966 and 1967 * * * to permit the timely injection of gas necessary for the projected withdrawal of gas in the 1967-1968 heating season". In view of our action herein on the certificate, itself, consideration of issuance of a temporary certificate is unnecessary.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described and more fully described in the application in this proceeding and in the appendix hereto will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction

of the Commission, and the construction, acquisition and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction, acquisition and operation of facilities and transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (d), and (e) of Section 157.20 of such Regulations.

(6) The issuance of the certificate herein should not constitute or imply a finding that the Bistineau Gas Storage Field and related facilities should be treated in any specific manner in any of Applicant's further rate proceedings.

(7) The maximum inventory of gas to be stored should not exceed 102,343 MMcf at 14.9 psia.

(8) Applicant should be required to file reports on the development of the Bistineau Gas Storage Field as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction, acquisition and operation of facilities, including the acquisition of leases, all as hereinbefore described and as more fully described in the application and in the appendix hereto, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), (d), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations in accordance with the time schedule set out in the application, *i.e.* Phase I by October 31, 1967, Phase II by October 31, 1968 and Phase III by October 31, 1969.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant's compliance with the following:

(1) The maximum inventory of natural gas stored shall not exceed 102,343 MMcf at 14.9 psia.

(2) Applicant shall submit semi-annual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information:

(a) The volumes of natural gas injected and withdrawn in each month of the cycle,

(b) The volume of natural gas in the storage reservoir at the end of the cycle,

(c) The maximum daily injection and withdrawal rates experienced during the cycle,

(d) The shut-in wellhead pressure of each well in the storage field and the average of such pressures, and

(e) A map of the storage field showing the shut-in wellhead pressures at all storage wells and at all other wells in the area immediately adjacent to the storage field.

(f) Reports shall continue to be filed semi-annually until the maximum reservoir content has reached or closely approximates the maximum reservoir content permitted in the Commission's order, and thereafter until two additional injection-withdrawal cycles have been completed. Upon completion of those two additional cycles the filing of reports shall be discontinued unless otherwise ordered by the Commission.

(E) The foregoing authorization does not constitute or imply a finding that storage facilities herein authorized or any other facilities should be treated in any specific manner for cost allocation purposes in any future rate proceedings of United Gas Pipe Line Company.

(F) The determination on United's proposed accounting for claimed costs of property and "Storage Rights" to be acquired is hereby reserved subject to further order.

APPENDIX

PROPOSED FACILITIES

Phase I, for construction in 1966:

a. Recondition 22 plugged and existing old wells for use as injection-withdrawal wells and observation wells;

b. 20 wells to be drilled for injection-withdrawal wells;

c. Approximately 10.3 miles of gathering lines;

d. 12,000 horsepower compressor station at the storage field;

e. Dehydration and miscellaneous appurtenant facilities at the storage field;

f. Approximately 10.35 miles of 30-inch transmission lines from the storage field to the Carthage to Sterlington line;

g. 4,000 horsepower compressor station and appurtenant facilities to be located on United's existing offshore to Napoleonville line;

h. Approximately 0.45 mile of 30-inch pipeline and connections to extend from the above compressor station to United's Bayou Sale Junction; and

i. Approximately 1.95 miles of 30-inch pipeline and connections to be installed near United's West Monroe Junction as its Calhoun tie-over.

Phase II, for construction in 1968:

a. 5 wells to be drilled for injection-withdrawal wells;

b. Approximately 0.5 mile of gathering lines; and

c. Measuring and regulating stations and cathodic protection facilities.

Phase III, for construction in 1969:

a. 5 wells to be drilled for injection-withdrawal wells;

b. Approximately 1.7 miles of gathering lines;

c. 2,000 horsepower compressor to compressor station; and

d. Measuring and regulating stations and cathodic protection facilities.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-249

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued April 29, 1966)

On February 1, 1966, United Gas Pipe Line Company (Applicant), filed in Docket No. CP66-249 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale certain natural gas facilities now being used to deliver natural gas to Louisiana Gas Service Company, all as more fully set forth in the application.

Specifically, Applicant seeks permission and approval to abandon by sale the following facilities, all of which are located in the State of Louisiana: (1) 0.4 mile of 4-inch pipeline downstream from its Amite town border station in Tangipahoa Parish, (2) 0.2 mile of 4-inch pipeline downstream from its Covington town border station in St. Tammany Parish, (3) 0.04 mile of 4-inch pipeline downstream from its Ponchatoula town border station in Tangipahoa Parish, (4) 0.1 mile of 4-inch pipeline downstream from its Independence town border station in Tangipahoa Parish, (5) 0.1 mile of 4-inch pipeline and 0.1 mile of 6-inch pipeline downstream from its Hammond-Natalbany town border station No. 1 in Tangipahoa Parish, (6) 0.1 mile of 4-inch pipeline downstream from its Slidell town border station in St. Tammany Parish, (7) 0.1 mile of 4-inch pipeline downstream from its Mandeville town border station in St. Tammany Parish, and 2.7 miles of 2-inch pipeline beginning at and running upstream from its Mandeville town border station in St. Tammany Parish, (8) 0.5 mile of 4-inch pipeline downstream from the Delhi town border station in Richland Parish, (9) 0.6 mile of the 4-inch Rayville-Winnsboro pipeline from Milepost 1.67 to Milepost 2.34 around the town of Archibald, in Richland Parish, (10) 0.7 mile of the 4-inch Rayville-Winnsboro pipeline from Milepost 4.44 to Milepost 5.29 around the town of Mangham, in Richland Parish, (11) 0.4 mile of 3-inch pipeline lying between United Gas Pipe Line Company's Collinston measuring station and Louisiana Gas Service Company's regulator station, all located in Morehouse Parish, (12) 0.4 mile of 4-inch pipeline downstream from its Epps town border station in West Carroll Parish and (13) 1.0 mile of 4½-inch pipeline running west from Milepost 5.05 on the Rayville-Winnsboro pipeline in Richland Parish.

Under an agreement dated November 19, 1965, Louisiana Gas Service Company has agreed to acquire the above described facilities from Applicant and will after acquisition integrate the same into its distribution systems. There will be no abandonment of sales or service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found

by the Commission in its order issued November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities proposed to be abandoned by sale to Louisiana Gas Service Company as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described by sale to Louisiana Gas Service Company, as more fully described in the application in this proceeding, are granted to Applicant, United Gas Pipe Line Company.

(B) Upon completion of the abandonment and sale Applicant shall within 10 days advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above, filing with the Commission in writing and under oath, an original and four conformed copies of the notice of abandonment and sale showing the date thereof.

(C) The abandonment and sale of the facilities shall be completed within one year of the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-154

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1966)

On March 7, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP62-154 a petition to amend the certificate of public convenience and necessity issued on October 17, 1962, 28 FPC 614, and later amended on August 31, 1964, 32 FPC 674, and December 28, 1965, 34 FPC 1563, by authorizing a change in the volumetric limitation on its natural gas service to Southern California Gas Company and Southern Counties Gas Company of California (known jointly as "Southern") under its FPC Rate Schedule G-X-2 to an annual maximum of 63,725,000 Mcf[1] of gas in lieu of the presently authorized daily maximum of 174,680 Mcf, as more fully set forth in the petition to amend.

In the certificate issued October 17, 1962, Petitioner was authorized to sell and deliver up to 26,000,000 Mcf of natural gas during the year 1962 on an interruptible, "best efforts" basis, under Petitioner's Rate Schedule G-X-2. Petitioner was authorized, on a temporary basis, to continue the deliveries during 1963 and 1964. Service under Rate Schedule G-X-2 for a period commencing August 31, 1964, continuing through December 1965, was authorized by the certificate amendment issued in this docket on August 31, 1964. The period January 1, 1966, through December 31, 1966, is currently covered by the amendment issued herein on December 28, 1965, which amendment authorized the sale and delivery of a maximum of 174,680 Mcf per day to Southern.

Petitioner now requests a change in the volumetric limitation of 174,680 Mcf per day to an annual maximum of 63,725,000 Mcf with no other changes in terms or conditions of the service as presently authorized. Petitioner states that it has recently had available excess gas which could have been delivered to Southern, except for the present volumetric limitation. Southern has advised Petitioner that its system can accommodate additional deliveries in excess of the daily limitations and that such additional deliveries will help reduce its curtailment of industrial sales during the colder months of 1966 and will enable Southern to refill its storage reservoirs after winter withdrawals. Southern also states that none of its other suppliers will be affected by removal of the daily maximum limitations as proposed.

On March 25, 1966, Petitioner tendered for filing an executed service agreement dated March 7, 1966, providing for the sale and delivery by Petitioner of interruptible volumes of natural gas on a "best efforts" basis under Rate Schedule G-X-2 from the date of this authorization through December 31, 1966. This new agreement supersedes the currently effective service agreement dated September 1, 1965, and provides for an annual volumetric limitation of 63,725,000 Mcf in lieu of the 174,680 Mcf daily maximum provided for in the current agreement.

Due notice of the filing of the petition to amend was published in the Federal Register on March 22, 1966 (31 F.R. 4817). No protest, petition to intervene, or notice of intervention has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued October 17, 1962, in Docket No. CP62–154, and later amended, be further amended as hereinafter ordered.

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[1] All volumes are stated at 14.73 psia.

The Commission orders:

(A) The certificate of public convenience and necessity issued in Docket No. CP62–154 on October 17, 1962, and amended on August 31, 1964, and December 28, 1965, is further amended by changing the volumetric limitation in the authorization for service to Southern California Gas Company and Southern Counties Gas Company of California under Petitioner's Rate Schedule G–X–2 from a maximum daily volume of 174,680 Mcf to an annual maximum of 63,725,000 Mcf of natural gas, as hereinbefore described and as more fully described in the petition to amend.

(B) In all other respects the certificate, as amended, shall remain in full force and effect.

(C) The superseding Service Agreement between Petitioner and Southern dated March 7, 1966, and submitted for filing on March 25, 1966, is accepted for filing and made effective the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66–286

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 2, 1966)

On March 8, 1966, Lone Star Gas Company (Applicant) filed in Docket No. CP66–286 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and salvage 0.79 mile of 6⅝-inch O.D. and 0.01 mile of 7-inch O.D. pipeline, all as more fully set forth in the application.

The pipeline to be abandoned (known as Line GD–J) is looped by 8-inch Line 2nd GD–J. The area in which the looped portion of Line GD–J is located will be inundated by a projected water supply reservoir for the Town of Elmore City, Garvin County, Oklahoma. The looped portion of Line GD–J and part of Line 2nd GD–J will be submerged in the water used to fill the reservoir. The submerged pipeline must be anchored to prevent it from floating to the surface.

Applicant states that during peak periods Lines GD–J and 2nd GD–J transport natural gas southward from the Warren Petroleum Corporation, *et al.*, Antioch Gasoline Plant to Applicant's Line GD to augment the gas supply for the Town of Wynnewood, Oklahoma, and certain other of Applicant's customers. At other times gas flows in the opposite direction, moving from the Katie Gasoline Plant through Lines GD–J and 2nd GD–J into Line TB, furnishing a part of the requirements of Applicant's T system. In either case, Line 2nd GD–J has sufficient capacity to handle the available volumes of natural gas to be transported.

Applicant will anchor Line 2nd GD–J for immersion under the water of the projected reservoir and abandon and salvage for use elsewhere Line GD–J, which is neither suitable nor economically feasible for service under water.

The proposed abandonment will have no detrimental effect on Applicant's existing services.

Due notice of the filing of the application was published in the Federal Register on March 22, 1966 (31 F.R. 4818). No protest, petition to intervene or notice of intervention has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding are granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

(C) Applicant shall file a report with the Commission within 60 days after the completion of this project giving a full description of the methods used to anchor the pipeline which will be submerged including the costs subdivided between material and labor.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP66-275

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1966)

On February 23, 1966, Michigan Gas Storage Company (Applicant), filed in Docket No. CP66-275 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of two new delivery points for the delivery of gas to Consumers Power Company (Consumers) and the construction and operation of the necessary metering and regulating facilities at the proposed new delivery points, all as more fully set forth in the application.

The purpose of the proposed new delivery points is to deliver gas to its sole customer Consumers for service to the unincorporated community of Eureka (third year peak day of 76 Mcf) and adjoining areas in the Township of Greenbush, Clinton County, Michigan, and to the unincorporated community of Cohoctah (third year peak day of 87 Mcf) and adjoining areas in the Township of Cohoctah, Livingston County, Michigan, which communities do not presently have natural gas service. The delivery point proposed to serve Eureka will be located on Applicant's 22-inch pipeline and 26-inch pipeline near the center of Greenbush Township, Clinton County, Michigan. The delivery point proposed to serve Cohoctah will be located on Applicant's 24-inch pipeline near the southeast corner of Cohoctah Township, Livingston County, Michigan

Applicant states that gas deliveries to the proposed new delivery points will not result in any increase in Applicant's present annual or peak day deliveries of gas to Consumers and that deliveries at these points will be made possible by the adjustment of Applicant's pattern of deliveries at other delivery points on its system.

The total estimated cost of the facilities proposed to be constructed by Applicant is $44,000, which cost will be defrayed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Delaware corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The proposed construction and operation of facilities and sale of natural gas by Applicant to Consumers as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and sale of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Michigan Gas Storage Company in this proceeding, authorizing the construction and operation of facilities and the sale of natural gas to Consumers, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–228

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1966)

On February 25, 1966, Northern Natural Gas Company (Applicant), filed in Docket No. CP64–228 an application to amend the order issued in said docket on March 9, 1965, and amended on June 30, 1965, 33 FPC 501, 1307, by requesting authority to install one 9,100 horsepower compressor unit at its Clifton Kansas Compressor Station (Clifton) in lieu of the two 4,000 horsepower units presently authorized and by requesting that the time prescribed by the Commission for the completion of construction be extended 12 months from March 9, 1966, to March 9, 1967, all as more fully set forth in the application to amend.

The order issued in the instant docket, as amended, authorized Applicant to construct and operate certain facilities, including two 4,000 horsepower compressor units at Clifton, to render initial natural gas service to the Consumers Cooperative Association for use in its fertilizer plant located near Fort Dodge, Iowa.

Applicant states that in viewing its 1966 mainline construction program, it has become apparent that certain economies of construction can be realized by utilizing larger units of horsepower. In order to take advantage of these economies it requests the authority to install one 9,100 horsepower compressor unit at Clifton in lieu of the two 4,000 horsepower units presently authorized. Applicant further states that the estimated cost of the two 4,000 horsepower units is $2,390,100 as compared with the estimated cost of $2,151,000 for the installation of one 9,100 horsepower unit, resulting in a savings of approximately $239,100.

The Commission's order issued in the instant docket provided that the facilities must be constructed and placed in service by March 9, 1966. Petitioner requests that the time be extended for twelve months to allow for construction of the proposed 9,100 horsepower unit.

Due notice of the subject application to further amend and opportunity for hearing has been given by publication in the Federal Register on March 12, 1966 (31 F.R. 4365). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. CP64–228 on March 9, 1965, as amended on June 30, 1965, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 9, 1965, as amended on June 30, 1965, in Docket No. CP64–228 is further amended so as to authorize the Applicant to install one 9,100 Hp compressor unit at its Clifton Kansas Compressor Station in lieu of the two 4,000 Hp units presently authorized, and to extend the time within which the construction of the compressor unit shall be completed and the facilities placed in operation from March 9, 1966 to March 9, 1967.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

APPALACHIAN POWER COMPANY, PROJECT NO. 2317

ORDER DENYING REHEARING OF DISMISSAL, IN PART, OF LICENSE APPLICATION, AND DENYING RECONSIDERATION OF GRANT OF INTERVENTION AND HEARING AS TO REMAINDER OF LICENSE APPLICATION

(Issued May 3, 1966)

On February 26, 1965, the Appalachian Power Company (Appalachian) filed an application for license seeking authorization to construct (1) a hydroelectric development (including pumped storage) consisting of upper and lower reservoirs in the New River in North Carolina and Virginia and appurtenant power-generating and other facilities; and (2) the installation of power facilities at the United States Bluestone Reservoir project dam. Bluestone Dam is in West Virginia, about 140 river miles downstream from the proposed lower pumped storage reservoir. Bluestone Reservoir impounds water in West Virginia and Virginia.

By order, issued March 8, 1966, 35 FPC 359, we dismissed that part of the application for license relating to the Bluestone Reservoir project on the ground that the Bluestone project, including power-generating facilities, has been authorized by the Congress for construction under the direction of the Secretary of the Army and the supervision of the Chief of Engineers. On April 6, 1966, Appalachian filed an application for rehearing of that part of our order of March 8, 1966 dismissing that portion of the license application relating to Bluestone. The Applicant also requested reconsideration of our ordering a hearing and permitting certain REA cooperatives to intervene.

In our order of March 8, 1966, we examined the legislative history of the Bluestone Reservoir project, which reveals that the project, including the installation of power-generating facilities, was authorized by the President under emergency relief legislation, and that the Congress not only ratified this action but also authorized the project for flood control and power generation in the Flood Control Acts of 1936 (49 Stat. 1570, 1572, 1586) and 1938 (52 Stat. 1215–17). The "production of power is combined with flood control in the project" as authorized by the President and Congress. *United States* v. *West Virginia Power Co.*, 122 F. 2d 733, 738 (CA4–1941) (Parker, J.), cert. denied, 314 U.S. 683.

In its application for rehearing the Applicant repeats the argument that the discretion to change or modify project plans, conferred upon the Chief of Engineers, includes by implication the power to eliminate one of the major purposes of the project as authorized by the President and the Congress. As detailed in our order of March 8, 1966, in December, 1945, the Chief of Engineers, through General Crawford, informed the Subcommittee of the Senate on Appropriations that at Bluestone "the power generating facilities are being deferred at present" because "the entire storage capacity is needed for flood control". For this reason we stated that it was not necessary for us to examine the extent of the discretion conferred on the Chief of Engineers because installation of power had been deferred not eliminated as a project purpose.

The reservoir at Bluestone was completed in 1952. It is the contention of the Applicant that to install power-generating facilities at this time a "new authorization" by Congress would be required. In examining the authorization of a project, the established practice by which the Chief of Engineers makes known his recommendations to the Congress should be consulted. *United States* v. *Arizona*, 295 U.S. 174, 191–2. The Chief of Engineers may, of course, recommend major modifications of a project to the Congress. If authorization is for a single purpose, such as flood control, and changed conditions make it seem desirable to install power-generating facilities, the Chief of Engineers may recommend Federal installation of such facilities to the Congress leading to an amendment or supplement to the statute originally authorizing construction.

As an example, the House Committee on Flood Control, reporting the Flood Control Act of 1938, stated that Bluestone was one of but two reservoirs in the bill at which the development of power was authorized.[1] In 1945 the Corps of Engineers, informing the Subcommittee of the Senate Committee on Appropriations that installation of power-generating facilities at Bluestone was deferred for flood control reasons, distinguished it from the Detroit project, in Oregon, a single-purpose flood control project.[2] In the Flood Control Act of 1948, (62 Stat. 1171, 1175, 1178), the Detroit project authorization was specifically modified to provide for the installation of power-generating facilities in accordance with the recommendation of the Chief of Engineers.

The Detroit project illustrates that where power-generating facilities are installed at a flood control reservoir constructed under the general authority of the Flood Control Act of 1938, the project is expressly modified by statute in subsequent legislation. The Bluestone Reservoir project is the reverse of this situation. Installation of power-generating facilities at Bluestone was expressly recommended in 1935 by the Chief of Engineers and power generation was subsequently authorized as a project purpose by Executive Order No. 7183A, September 12, 1935, and the Flood Control Acts of 1936 and 1938. Accordingly, should the upstream development relieve the Bluestone Reservoir project of some of its flood control burden, the Chief of Engineers could, without any further construction authorization authority from Congress, continue to build the project by installing power-generating facilities, subject to the availability of funds.

The Applicant also contends that the Commission has the authority to license non-federal development when "it is clear that the Congressional authorization is outdated or is not to be carried out". In this connection the Applicant cites *Grand River Dam Authority*, 8 FPC 635, in which the Commission, dismissing a preliminary permit application for the Markham Ferry project, found that there was no evidence in the record that "construction of the project under Congressional authorization as found herein has been abandoned or modified". *Id.* at 637. The history of the case shows that changed circumstances affecting authorization must be sought in the action of Congress. In 1955 a license was issued 14 FPC 815, for the Markham Ferry project after Congress had authorized this by the Act of July 6, 1954 (68 Stat. 450).

By our order of March 8, 1966, we granted intervention to the following cooperatives: (1) the North Carolina Electric Membership Corporation and the Old Dominion Electric Cooperative, each representing, respectively, a number of REA cooperatives located in North Carolina and Virginia; (2) the Blue

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[1] H.R. Rep. No. 2353, 75th Cong., 3rd Sess. 5–6 (1938).

[2] Hearings before Subcommittee of Senate Committee on Appropriations, *First Deficiency Appropriation Bill for [Fiscal] 1946; H.R. 4805*, 79th Cong., 1st Sess., at 513–514 (1945).

Ridge Electric Membership Corporation, a member of North Carolina Electric; (3) Mecklenburg Electric Cooperative, a member of Old Dominion; (4) Harrison Rural Electrification Association, Inc., of West Virginia. The Applicant requests reconsideration of our ordering a public hearing and permitting the cooperatives to intervene.

As noted in our order of March 8, 1966, in their petitions to intervene the cooperatives alleged, among other things, that the Commission should refuse to issue the license and should recommend to the Congress under Section 7(b) of the Federal Power Act, that a multiple-purpose project at the Moores Ferry site should be undertaken by the United States itself. In this connection the cooperatives state that the reach of the river sought to be developed by the Applicant upstream from Fries, Virginia, is important from the standpoint of flood control, power generation, low flow augmentation and recreation, and that the Applicant's proposed project inadequately provides for these public uses.

Appalachian contends that a hearing is not warranted by the comments of interested Federal agencies nor by the allegations of the cooperatives. The Chief of Engineers, in his report on the application filed November 10, 1965, stated that the most significant problem is the high degree of industrial pollution of the New-Kanawha River in the vicinity of Charleston, West Virginia. The Secretary of Health, Education, and Welfare, in his letters of August 12, 1965 and March 15, 1966, stated that the project as proposed would realize only a relatively small portion of the potential of the site for flow regulation for water quality control. The Secretary of the Interior, in his report on the application, received November 3, 1965, expressed the view that the recreational development plan, submitted by the Applicant, does not adequately provide for initial and ultimate development of the recreational resources of the project area. Moreover, in our order issuing a preliminary permit we warned the Applicant that under the circumstances of this case issues under Sections 10(a) and 7(b) of the Federal Power Act are of "special significance." *Appalachian Power Co.*, 29 FPC 445, 447, Project No. 2317, March 11, 1963.

The Commission finds:

The application for rehearing of our order dismissing in part the license application, and the petition for reconsideration of our order granting intervention and ordering a hearing present no fact or legal principle which would warrant any change or modification of our order issued March 8, 1966.

The Commission orders:

The application for rehearing and petition for reconsideration filed by Appalachian Power Company on April 6, 1966, are hereby denied.

Chairman White *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LAKE SUPERIOR DISTRICT POWER COMPANY, PROJECT NO. 2444

ORDER ISSUING LICENSE (MINOR)

(Issued May 3, 1966)

Application was filed on February 3, 1964 by Lake Superior District Power Company (Applicant) of Ashland, Wisconsin, for a license under the Federal

Power Act (Act) for constructed Project No. 2444, known as the White River Hydroelectric Project, located on White River in the Township of White River, Ashland County, Wisconsin. No lands of the United States are affected by the project.

The original project dam was constructed in 1907 and the project was completed in its present form in 1927.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, advised that the project as presently operated does not affect adversely fish and wildlife resources and no fishway is needed at this time, but the Department recommended for inclusion in any license for the project conditions in the interests of fish and wildlife and recreational resources, as set forth in Articles 4 and 7 of attached Form L-9.

The Department of Health, Education, and Welfare has reported that the project has no adverse affects on water supply, pollution control or vector control and none is anticipated.

The Conservation Department of the State of Wisconsin recommended that in the interests of public recreation the present access and boat launching site be enlarged and an additional area be reserved for its further expansion; that a public portage route be established from the dam to the vicinity of the powerhouse; and that a reasonable downstream flow at all times be insured by a provision to that effect in any license for the project. In commenting on the Department's recommendations, Applicant advised that it was presently enlarging the boat launching site to accommodate at least five cars and that a sign would be erected to indicate that the existing road is available as a public portage for canoeists. The Wisconsin Conservation Department has advised that these improvements have not, as yet, been completed. By Article 12, we are requiring Applicant to file Exhibit R in conformance with § 4.41 *Exhibit R* of the Commission's Regulations, which shall include in addition to a schedule for completion of these improvements, plans following consultation with the Wisconsin Conservation Department, for reasonable flow releases at all times downstream from the project dam to maintain the fishery.

The White River is the largest tributary of the Bad River which enters Lake Superior five miles southeast of Chequamegon Bay in northern Wisconsin. The White River, having a total length of about 40 to 45 miles, rises in Long Lake in Bayfield County, Wisconsin, at about 700 feet above the level of Lake Superior, most of which descent is concentrated in its upper waters. White River enters Bad River about five river miles above its mouth in Lake Superior. There is ample historical evidence of the extensive use of White River for the commercial transportation of logs from its source in Long Lake down to its confluence with Bad River and down the latter river to sawmills on Chequamegon Bay. These operations commenced from at least as early as 1863 and extended until the 1880's. Project No. 2444 is located on White River about 13 miles above its confluence with Bad River.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, (33 FPC 275) we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) White River, from its source in Long Lake down to its confluence with Bad River and the latter River to its mouth in Chequamegon Bay are navigable waters of the United States.

(2) Project No. 2444 is located upon navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,330 horsepower, and the amount of annual charges, based on such capacity, is to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Lake Superior District Power Company of Ashland, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2444, located on White River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2444 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) an 800 foot long, 30-foot high earth dam, a concrete spillway and headrace section near the center containing two sluiceways controlled by radial gates 25 feet wide and 26½ feet high; a 7-foot diameter redwood penstock from dam to surge tank at the powerhouse; a 39 x 60 foot powerhouse with total installed capacity of 1,000 kilowatts operating under a gross head of 49.5 feet; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Article 1 through 11, are attached hereto, and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall, on or before January 1, 1966, file with the Commission for approval its proposed recreational use plan for the project. The plan shall conform to the requirements of 18 CFR 4.41, *Exhibit R* of the Commission's Regulations under the Act, and shall include plans, following consultation with the Wisconsin Conservation Department, for reasonable flow releases at all times downstream from the dam to maintain the fishery, parking spaces at the boat launching ramp, a canoe portage at the dam, and signs as needed to inform the public of recreational opportunity at the project.

Article 13. The Licensee shall pay to the United States the following annual charge effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, an annual charge of $66.50.

(D) The terms and conditions of the Act, which it has been found to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. CP62-243, CP61-339, CP63-99; TRUNKLINE GAS COMPANY, DOCKET NO. CP66-171; MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NOS. G-863, CP62-242, CP63-100

ORDER DENYING SEVERANCE AND GRANTING OMISSION OF INTERMEDIATE DECISION PROCEDURE

(Issued May 3, 1966)

Prior to the conclusion of the formal hearing in the above-styled proceedings on April 7, 1966, the applicants Mississippi River Transmission Corporation (Mississippi), Natural Gas Pipeline Company of America (Natural), and Trunkline Gas Company (Trunkline) orally moved, pursuant to Rule 1.30(c) for a waiver and omission of the intermediate decision procedure.

Natural and Mississippi on April 7th and 8th, 1966, respectively filed written motions with the Commission pursuant to Sections 1.30(c) and 1.32(b) of its Rules of Practice and Procedure requesting that the intermediate decision in the above-entitled proceedings be omitted and that an order be issued forthwith granting the certificates of public convenience and necessity as applied for in these proceedings. In addition Natural also moved that the proceedings in *Trunkline Gas Company*, Docket No. CP66-171, be severed from all the other dockets that were consolidated pursuant to this Commission's order in *Natural Gas Pipeline Company of America, et al.*, Docket No. CP62-243, *et al.*, issued on February 24, 1966.

On April 13, 1966, Trunkline filed a motion joining in the motion filed by Mississippi for omission of the intermediate decision. Motions in support of Mississippi's motion were filed on April 13, 1966, and April 14, 1966, by Laclede Gas Company (Laclede) and Missouri Natural Gas Company (Missouri Natural).

On April 15, 1966, Owens-Illinois Inc. and Granite City Group filed a motion in opposition to that portion of Natural's motion which requested that the proceedings in *Trunkline Gas Company*, Docket No. CP66-171, be severed from all other dockets consolidated by the Commission's order of February 24, 1966.

On April 13, 1966, the Presiding Examiner certified to the Commission the oral motions made by the Applicants to omit the intermediate decision on April 7, 1966.

Applicants point out that in the event Commission approval is forthcoming with respect to their requests that substantial new facilities will have to be constructed. They argue that these facilities must be installed during the coming summer months if delivery of gas is to be made commencing this fall. Applicants further contend that if time is allowed for a full briefing schedule, an Examiner's decision, and the filing of exceptions thereto, a strong possibility would exist that the needed facilities could not be installed prior to the next winter heating season.

In view of the foregoing, the Commission will therefore grant the request of the applicants for omission of the intermediate decision.

The Commission is of the opinion that the proceeding in *Trunkline Gas Company*, Docket No. CP66-171, was properly consolidated with the other dockets in the above-styled proceedings in the order issued by it on February 24, 1966. These applications present certain common issues that should be considered together. Natural in its motion for severance did not cite any compelling reasons why the severance it requested should be granted. The Commission will therefore deny that portion of Natural's motion whereby it requests the severance of the proceeding in *Trunkline Gas Company*, Docket No. CP66-171.

The Commission is also of the opinion that any alteration in the briefing method and schedule fixed by the Presiding Examiner would tend to delay a final determination in these proceedings. It will therefore adopt the Presiding Examiner's briefing schedule and require the filing of briefs be made in accordance with that schedule.

The Commission finds:

(1) The due and timely execution of the Commission's functions require that the Intermediate Decision Procedure be omitted in the proceedings in *Natural Gas Pipeline Company of America*, Docket No. CP62-243, *et al.*

(2) Orderly and proper procedure require that all dockets in the proceedings in *Natural Gas Pipeline Company of America*, Docket No. CP62-243, *et al.*, be considered on a consolidated basis.

(3) The alteration of the briefing schedule that has been fixed by the Presiding Examiner in Natural Gas Pipeline Company of America, Docket No. CP62-243, *et al.* will tend to further delay the final determination of these proceedings.

The Commission orders:

(A) The motions of the applicants requesting the omission of the Intermediate Decision Procedure in the proceedings in *Natural Gas Pipeline Company of America, et al.*, Docket No. CP62-243, *et al.* is granted.

(B) The motion of Natural Gas Pipeline Company of America requesting the severance of the proceeding in Trunkline Gas Company, Docket No. CP66-171, from the proceedings in *Natural Gas Pipeline Company of America, et al.*, is denied.

(C) All parties desiring to submit briefs to the Commission in the proceeding in *Natural Gas Pipeline Company of America*, Docket No. CP62-243, *et al.* shall do so in accordance with the briefing schedule fixed by the Presiding Examiner.

Commissioner Black *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE POTOMAC EDISON COMPANY OF WEST VIRGINIA, PROJECT NO. 2516

ORDER ISSUING LICENSE (MINOR)

(Issued May 3, 1966)

Application was filed on April 14, 1965 by Potomac Light and Power Company[1] (Applicant) of Martinsburg, West Virginia, for a minor license under the Federal Power Act (Act) for constructed minor Project No. 2516, known as Dam No. 4 Hydro Station, located on the Potomac River, at river mile 195, in Berkeley County, West Virginia, near the Town of Shepherdstown.

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[1] Since the filing of the application for license, we have received documentary evidence that Potomac Light and Power Company has changed its name to The Potomac Edison Company of West Virginia, whose address is 55 East Washington Street, Hagerstown, Maryland 21740. Hence the word "Applicant" as used herein will refer to The Potomac Edison Company of West Virginia.

According to the application, the project has been in service since 1909 and it appears that no substantial alterations have been made to the project.

Applicant's project, consists of a headrace, powerhouse, tailrace and a substation—all located at a U. S. Government dam on the Potomac River. Applicant takes water from above the dam for the generation in its powerhouse of hydroelectric energy. The water released for power purposes is surplus to that used to maintain navigation on the Chesapeake and Ohio Canal on the Maryland side of the river which forms a part of the Chesapeake and Ohio Canal National Monument.

The United States, through the National Park Service, Department of the Interior, purchased the Chesapeake and Ohio Canal in 1938. Applicant has been operating the project and paying an annual rental under agreements with the United States through the Park Service, the last of which, dated December 31, 1963, expires December 31, 1968. The annual rental charge is $750 for the use of Dam Nos. 4 and 5, except during periods when the generating plants cannot be operated. During periods when only one of the plants can be operated, the rental charge is reduced by 50 percent for such periods. In addition to the rental payment, the agreement requires Applicant to maintain the Government dam. By letter dated April 15, 1966, we were advised by Applicant that its expense for maintenance of Government Dam Nos. 4 and 5 has averaged less than $500 per year for each dam over the last 10 years. On the basis of the foregoing, the annual benefits to the United States provided under the agreement Applicant and the United States are considered reasonable.

In the circumstances, we are granting this license for a period co-terminating with the expiration date of the outstanding agreement between Applicant and the Park Service, namely, December 31, 1968. Should the aforesaid agreement be renewed for an additional period, Applicant may apply for a new license for the project for the period of the new or supplemental agreement, but not to exceed a period of 25 years.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that: a study of the Potomac River was authorized by a Resolution of the Senate Public Works Committee, dated January 26, 1956, which requested a review of a previous report on the Potomac River and Tributaries;[2] a subsequent resolution by the same Committee, dated July 6, 1959, and other resolutions expanded the scope of the study and while the report on the result of such study has been completed by the District and Division Engineers, the report has not been submitted to Congress. The report, dated February, 1963, recommends a comprehensive plan for development of the water resources of the Potomac River Basin for the purposes of flood control, water supply, water quality control, and recreation. The report on the application for license also advised that the plans of the project structures affecting navigation are satisfactory, and no objection to the issuance of a license for the project was offered.

The Department of the Interior, in reporting on the application, advised that the project as presently operated does not affect adversely fish and wildlife, and no fishway is needed at this time, but it did recommend for inclusion in any license for the project, two conditions in the interests of fish and wildlife resources as set forth in Article 7 of attached Form L-9 and Article 15.

The Department of Health, Education, and Welfare has recommended that the Potomac River's downstream flow be maintained equal to the river's incoming flow during naturally low streamflow periods to prevent adverse effects on water quality in the river, as provided for in Article 14.

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[2] Published as House Document No. 622, 79th Cong. 2d Sess. (1946).

By Article 13 we are requiring Applicant to file Exhibit R in conformance with § 4.41 *Exhibit R* of the Commission's Regulations under the Federal Power Act.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company*, Project No. 2347, *et al.*, (33 FPC 275), we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

In our order dated March 14, 1966, 35 FPC 378, issuing a license to Applicant for its constructed Harpers Ferry Hydro Station, Project No. 2515, (situated on the Potomac River at river mile 173), we found that the Potomac River, from its mouth in the Chesapeake Bay, at least upstream therefrom to Cumberland, Maryland, at mile 307 on its North Branch, is a navigable waterway of the United States. Project No. 2516 is situated within this stretch of the Potomac River.

The Commission finds:

(1) Dam No. 4 Hydro Station Project No. 2516 is located along navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of West Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as neccesary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) While the project affects a Government dam, the issuance of a license therefor, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); (10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to The Potomac Edison Company of West Virginia (Licensee) of Hagerstown, Maryland, under Sections 4(e) and 10(i) of the Act, for a period effective April 1, 1966, and terminating December 31, 1968, for the continued operation and maintenance of Project No. 2516 located in Berkeley County, West Virginia, on the Potomac River, a navigable water of the United States, subject to the terms and conditions of the Federal Power Act insofar as not expressly waived herein, which Act is incorporated by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Dam No. 4 Hydro Station (Project No. 2516) consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits of which are otherwise defined;

(ii) a head race, 230 feet long and 50 feet wide; a stone and reinforced concrete powerhouse (75 ft. x 80 ft. in plan) which contains two 500 kw horizontal generators operated by two 670 hp horizontal water wheels; a tailrace, approximately 80 feet wide and 600 feet long, a substation, appurtenant electrical and mechanical facilities; and

(iii) all other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and which are located in the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Water of the United States", (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions which are set forth as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $65, effective as of April 1, 1966;

(ii) The annual benefits to the United States under the aforementioned supplemental agreement dated December 31, 1953, and supplements thereto to date, are reasonable and adequate for the purpose of recompensing the United States for the use of surplus water or waterpower from a Government dam.

Article 13. The Licensee shall, within one year from the date of issuance of this license, submit for Commission approval an Exhibit R for this project which conforms to § 4.41 *Exhibit R* of the Commission's Regulations under the Federal Power Act.

Article 14. In the interest of water quality the Licensee shall, during periods of low flow in the Potomac River, utilize through its plant turbines all water which is made available to it by the National Park Service, Department of the Interior.

Article 15. The Licensee shall, for the conservation and development of fish, wildlife, and recreation resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Maryland Department of Game and Inland Fish or West Virginia Department of Natural Resources, after notice and opportunity for hearing and upon a finding based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of this issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE POTOMAC EDISON COMPANY OF WEST VIRGINIA, PROJECT NO. 2517

ORDER ISSUING LICENSE (MINOR)

(Issued May 3, 1966)

Application was filed on April 14, 1965, by Potomac Light and Power Company[1] (Applicant) of Martinsburg, West Virginia, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2517, known as Dam No. 5 Hydro Station, located on the Potomac River, at river mile 217, in Berkeley County, West Virginia, near the Town of Hedgesville.

According to the application, the project was placed in service in 1919, and it appears that no substantial alterations have been made to the project.

Applicant's project consists of a head race, powerhouse, tailrace and substation—all located at a U.S. Government dam on the Potomac River. Applicant takes water from above the dam for the generation in its powerhouse of hydroelectric energy. The water released for power purposes is surplus to that used to maintain navigation on the Chesapeake and Ohio Canal on the Maryland side of the river which forms a part of the Chesapeake and Ohio Canal National Monument.

The United States, through the National Park Service, Department of the Interior, purchased the Chesapeake and Ohio Canal in 1938. Applicant has been operating the project and paying an annual rental under agreements with the United States through the Park Service, the last of which, dated December 31, 1963, expires December 31, 1968. The annual rental charge is $750 for the use of Dam Nos. 4 and 5, except during periods when the generating plants cannot be operated. During periods when only one of the plants can be operated, the rental charge is reduced by 50 percent for such periods. In addition to the rental payment, the agreement requires Applicant to maintain the Government dam. By letter dated April 15, 1966, we were advised by Applicant that its expense for maintenance of Government Dam Nos. 4 and 5 has averaged less than $500 per year for each dam over the last 10 years. On the basis of the foregoing, the annual benefits to the United States provided under the agreement between Applicant and the United States are considered reasonable.

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[1] Since the filing of the application for license, we have received documentary evidence that Potomac Light and Power Company has changed its name to The Potomac Edison Company of West Virginia, whose address is 55 East Washington Street, Hagerstown, Maryland 21740. Hence, the word "Applicant" as used herein will refer to The Potomac Edison Company of West Virginia.

In the circumstances, we are granting this license for a period co-terminating with the expiration date of the outstanding agreement between Applicant and the Park Service, namely, December 31, 1968. Should the aforesaid agreement be renewed for an additional period, Applicant may apply for a new license for the project for the period of the new or supplemental agreement, but not to exceed a period of 25 years.

The Secretary of the Army and the Chief of Engineers have reported that: a study of the Potomac River was authorized by a Resolution of the Senate Public Works Committee, dated January 26, 1956, which requested a review of a previous report on the Potomac River and Tributaries;[2] a subsequent resolution by the same Committee, dated July 6, 1959, and other resolutions expanded the scope of the study and while the report on the result of such study has been completed by the District and Division Engineers, the report has not been submitted to Congress. The report, dated February, 1963, recommends a comprehensive plan for development of the water resources of the Potomac River Basin for the purposes of flood control, water supply, water quality control, and recreation. The report on the application for license also advised that the plans of the project structures affecting navigation are satisfactory, and no objection to the issuance of a license for the project was offered.

The Department of the Interior, in reporting on the application, advised that the project as presently operated does not affect adversely fish and wildlife and no fishway is needed at this time, but it did recommend for inclusion in any license for the project, two conditions in the interests of fish and wildlife resources as set forth in Article 7 of attached Form L-9 and Article 15.

The Department of Health, Education, and Welfare has recommended that the Potomac River's downstream flow be maintained equal to the river's incoming flow during naturally low streamflow periods to prevent adverse effects on water quality in the river, as provided for in Article 14.

By Article 13 we are requiring Applicant to file Exhibit R in conformance with § 4.41 *Exhibit R* of the Commission's Regulations under the Federal Power Act.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company*, Project No. 2347, *et al.*, (33 FPC 275), we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

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[2] Published as House Document No. 622, 79th Cong. 2nd Sess. (1946).

In our order dated March 14, 1966, 35 FPC 378, issuing license to Applicant for its constructed Harpers Ferry Hydro Station, Project No. 2515, (situated on the Potomac River at river mile 173), we found that the Potomac River, from its mouth in the Chesapeake Bay, at least upstream therefrom to Cumberland, Maryland, at mile 307 on its North Branch, is a navigable waterway of the United States. Project No. 2517 is situated within this stretch of the Potomac River.

The Commission finds:

(1) Dam No. 5 Hydro Station Project No. 2517 is located along navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of West Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) While the project affects a Government dam, the issuance of a license therefor, as hereinafter provided, will not affect the development of any resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,500 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to The Potomac Edison Company of West Virginia, (Licensee) of Hagerstown, Maryland, under Sections 4(e) and 10(i) of the Act, for a period effective April 1, 1966, and terminating December 31, 1968, for the continued operation and maintenance of Project No. 2517 located in Berkeley County, West Virginia, on the Potomac River, a navigable water of the United States, subject to the terms and conditions of the Federal Power Act insofar as not expressly waived herein, which Act is incorporated by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Dam No. 5 Hydro Station Project No. 2517 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined;

(ii) an existing facility known as Dam No. 5 Hydro Station, which derives its power supply from a dam on the Potomac River owned by the United States, consisting of (1) a headrace approximately 40 feet x 80 feet in plan; (2) a reinforced concrete and brick powerhouse, approximately 40 feet x 80 feet in plan, which contains two 560 kw vertical generators driven by two 750 hp vertical water wheels; (3) a tailrace; (4) a substation; and (5) all other electrical and mechanical facilities appurtenant to the operation of the project; and

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are useful in the maintenance and operation of the project; and all rights and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States", (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions which are set forth as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of adminstration of Part I of the Act, $75, effective as of April 1, 1966;

(ii) The annual benefits to the United States under the aforementioned supplemental agreement dated December 31, 1953, and supplements thereto to date, are reasonable and adequate for the purpose of recompensing the United States for the use of surplus water or waterpower from a Government dam.

Article 13. The Licensee shall, within one year from the date of issuance of this license, submit for Commission approval an Exhibit R for this project which conforms to § 4.41 *Exhibit R* of the Commission's Regulations under the Federal Power Act.

Article 14. In the interest of water quality the Licensee shall during periods of low flow in the Potomac River, utilize through its plant turbines all water which is made available to it by the National Park Service, Department of the Interior.

Article 15. The Licensee shall, for the conservation and development of fish, wildlife, and recreation resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the West Virginia Department of Natural Resources after notice and opportunity for hearing and upon a finding based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(D) The terms and conditions of the Act, which it has been found to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS UTILITIES COMPANY, DOCKET NOS. CP65–270 AND CP62–288

FINDINGS AND ORDER AMENDING ORDER AUTHORIZING THE EXPORTATION OF NATURAL GAS AND DISMISSING APPLICATION TO AMEND

(Issued May 3, 1966)

On January 4, 1966, Texas Gas Utilities Company (Applicant) filed in Docket No. CP65–270 an application to amend the Commission's order issued May 14, 1965, 33 FPC 1020, to authorize Applicant to continue the exportation of natural gas from the United States to the Republic of Mexico for sale to Compania Nacional de Gas, S.A. (Compania) for resale and distribution by the latter in the town of Piedras Negras, Coahuila, Mexico, and for sale to Altos Hornos de Mexico, S.A. (Altos Hornos) (formerly La Consolidada, S.A.), all pursuant to new contracts with said purchasers, all as more fully set forth in the application to amend in this proceeding.

The order of May 14, 1965, authorized Applicant to continue to export natural gas, as successor to Associated Oil and Gas Company, for sale to the two above-described purchasers pursuant to a contract with Compania executed June 20, 1956, and a contract, as amended, with Altos Hornos executed June 19, 1956. On May 14, 1965, an amended Presidential Permit was released authorizing Applicant to continue the operation, maintenance and connection of natural gas transmission facilities at the international boundary near Eagle Pass, Texas, in order to continue the exportation of natural gas authorized by the order of May 14, 1965.

Pursuant to the sales contracts with Compania and Altos Hornos service to these purchasers will terminate on December 21, 1966, and June 19, 1966, respectively. The order of May 14, 1965, provides, among other things, that the authorization to export natural gas shall automatically terminate upon the termination or expiration of the subject sales contracts.

Applicant has executed new contracts with Compania on December 7, 1965, and Altos Hornos on November 11, 1965. The contract with Compania, for a term of twenty years from January 1, 1966, provides for the sale by Applicant of the full resale requirements of Piedras Negras, up to a maximum of 10,000 Mcf per day, at a step rate ranging from 35 cents per Mcf for the first 180,000 Mcf per year down to 26 cents per Mcf for volumes in excess of 580,000 Mcf per year. The rate escalates one cent per Mcf in each step every five years, commencing January 1, 1971. The contract with Altos Hornos, for a term of ten years from January 1, 1966, provides for the sale of the full requirements of the steel plant of Altos Hornos, but not less than 500,000 Mcf per year, at a rate of 22 cents per Mcf until January 1, 1971, and at 23 cents per Mcf thereafter.

No new facilities will be required for the proposed continued exportation of natural gas.

On January 4, 1966, Applicant filed an application to amend its Amended Presidential Permit in Docket No. CP62-288 to continue the exportation of natural gas as proposed, and as hereinabove described, in Docket No. CP65-270. Since Applicant does not propose any new construction or change of existing facilities at the international boundary near Eagle Pass, Texas, Applicant may continue the exportation of natural gas, pursuant to the new contracts, under the existing provisions of the Amended Permit. Accordingly, the application to amend the Amended Permit in Docket No. CP62-288 should be dismissed.

Due notice of the filing of the application to amend in Docket No. CP65-270 and opportunity for hearing thereon has been given by publication in the Federal Register on January 22, 1966 (31 F.R. 925). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 14, 1965, in Docket No. CP65-270, be amended as hereinafter ordered.

(2) The application to amend the Amended Permit in Docket No. CP62-288 should be dismissed.

The Commission orders:

(A) The Commission's order issued May 14, 1965, in Docket No. CP65-270 is amended to authorize Applicant to continue the exportation of natural gas for sale to Compania and Altos Hornos, pursuant to new contracts executed December 7, 1965, and November 11, 1965, respectively, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

(C) The application to amend the Amended Permit in Docket No. CP62-288 is dismissed.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2195

ORDER APPROVING REVISED PROJECT EXHIBIT L DRAWINGS

(Issued May 4, 1966)

On December 17, 1965, Portland General Electric Company, licensee for Project No. 2195, filed for Commission approval revised Exhibit L drawings L-30 and L-31 showing project structure changes made necessary by an increase in the spillway capacity of the existing River Mill Hydroelectric Development of Project No. 2195, located on the Clackamas River in Oregon, to provide for the passage of a flood of 150,000 cfs. The drawings were filed pursuant to Article 36 of the Commission's order issued April 23, 1965, 33 FPC 876, amending the license (17 FPC 58) for the project, which article states that when the Commission has approved the plans (drawings), the licensee shall commence construction as soon as river and weather conditions permit and shall complete the work within one year from the date of the start of construction.

Commission staff has reviewed the revised Exhibit L drawings and a report submitted by the licensee, with the Exhibit L drawings and supplement filed February 7, 1966, prepared by engineering consultants of the licensee on

"Requirements for Increasing the Spillway Capacity of the River Mill Hydroelectric Development Project No. 2195", and concluded that the project structures in the range of headwater at elevation 404.0 feet and the tailwater at elevation 333.0 feet, are safe and adequate for the passage of a flood of 150,000 cfs per second.

Under the revised Exhibit L drawings, if approved by the Commission, the license would be required to: (a) increase the height of the existing concrete counterfort wall on the right bank from elevation 399.3 to 407.0 feet, U.S.G.S. datum; (b) increase the height of the existing concrete wall on the left bank from elevation 398.0 to elevation 407.0 feet and extend the training wall downstream to contain the upper nappe of the 150,000-cfs design flood; (c) provide a levee-type dyke on the left bank about 10 feet high with a top width of 10 feet at elevation 408.0 feet and a concrete core wall 1 foot thick from the top of an existing concrete wall to elevation 407.0 feet; (d) install watertight steel plates for windows and stop logs at the double access door at the loading house, and rearrange structural features; (e) support the downstream wall at the gatehouse by horizontal structural steel beams placed against the outside wall and connected to existing pilasters and install an interior bulkhead between the gatehouse and the unloading house; and (f) place watertight ⅜-inch steel plate to outside face of window sills at the powerhouse to height of 4.5 feet against tailwater rise to elevation 333.0 feet.

The Department of the Army has advised that the structural project changes shown on the revised Exhibit L drawings are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior and the State of Oregon have advised that they have no objections to the design shown on the revised Exhibit L drawings, and that the fishway would not be affected thereby.

The Commission finds:

The following designated and described revised Exhibit L drawings conform to the Commission's Rules and Regulations and should be approved as part of the license for the project, and license Exhibit L, Sheet 10 Revised (FPC–2195–69) "General Plan," which is superseded, should be eliminated from the license for the project:

Exhibit No.	FPC No.	Title
L Sheet 30	2195-90	General Plan and Sections.
L Sheet 31	2195-91	Gatehouse Plan and Sections.

The Commission orders:

(A) The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2195, and the Exhibit L drawing described in the same finding as being superseded is hereby eliminated from the license for the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the foregoing order. In acknowledgment of the acceptance of the foregoing order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 2357

ORDER MODIFYING LICENSE ORDER ON REHEARING

(Issued May 4, 1966)

On April 8, 1965 Wisconsin Michigan Power Company (Applicant) filed application for rehearing of the order, dated March 10, 1965, 33 FPC 526, issuing a license under Section 4(e) of the Federal Power Act for constructed major Project No. 2357, known as the White Rapids project, located on Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

The Company alleged that it was aggrieved by the provisions of Article 30 of the license order which reserves to the Commission the right to determine at a later date what transmission facilities shall be included in the license as part of the project. The Commission granted rehearing for further consideration in an order issued May 3, 1965.

Applicant has proposed by letter dated January 6, 1966, as a means of disposing of the pending application for rehearing, that the license be amended to specifically include as part of the project the 0.28 mile of 138 kv transmission line from its 10,000 kva 2.3/138 kv substation to Chalk Hill-Junction Tower Line, the 10,000 kva substation and related facilities and to provide the word "additional" before the term "transmission facilities" in Article 30 of the license.

In a letter dated March 1, 1966, Applicant has also requested that the time for the filing of a recreational use plan for Project No. 2357 in accordance with Article 25 of the license be extended to March 10, 1967.

Upon further consideration of the matter, the Commission believes that it would be appropriate to modify the license order as proposed by Applicant in its letter of January 6, 1966.

The Commission finds:

It is appropriate and consistent with the public interest that the order issuing license in Project No. 2357 be modified as hereinafter provided.

The Commission orders:

(A) The license order, issued March 10, 1965 for Project No. 2357 is hereby modified as follows:

(1) Paragraph (B) of the license order is modified to read as follows:

(B) The White Rapids Project No. 2357 consists of:

(i) all lands constituting the project area and included by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as:

Exhibit J (FPC No. 2357—1) "General Map"

Exhibit K (FPC No. 2357—2) "Project Boundary and Transmission Line Location" (Exhibit K shows, but Exhibit M excludes, the transmission line extending southwardly from Applicant's Chalk Hill Plant, Project No. 2394)

(ii) project works consisting of: (1) a dam, 1,236 feet long and about 50 feet in maximum height—a composite structure made up of a concrete gravity channel segment 378 feet long flanked by clay-gravel embankment extending (at a top elevation of 723 feet m.s.l.) to the Michigan and Wisconsin banks of the river, the concrete segment consisting of a spillway section 246 feet long (controlled by 9 tainter gates 24 feet wide and 15.5 feet high) adjoining an integral-intake-powerhouse-substructure section 117 feet long; (2) a reservoir of about 465 acres; (3) a fish chute; (4) a reinforced concrete, steel and brick powerhouse 35.5 feet wide and containing two vertical shaft generators of 3,000 kw capacity driven by Francis turbines of 4,385 horsepower capacity (under a head of 29 feet) and one generator of 2,000 kw capacity driven by a Francis turbine of 3,100 horsepower capacity; (5) the 10,000 kva 2.3/138 kv Wisconsin Michigan Power Company substation at White Rapids; (6) the 138 kv transmission line extending from said substation about 0.28 of a mile to the Chalk Hill–Junction Tower Line; and (7) appurtenant electrical and mechanical facilities, the location, nature and character of which are delineated on the following described exhibits:

Exhibit L:

Sheet 1 (FPC No. 2357–3) "General Layout"
Sheet 2 (FPC No. 2357–4) "Cross Section of Plant"
Sheet 4 (FPC No. 2357–6) "Plant Floor and Sectional Plans'"
Sheet 5 (FPC No. 2357–7) "Plant Elevations"
Sheet 6 (FPC No. 2357–8) "Tainter Gate and Spillway Details"
Sheet 7 (FPC No. 2357–9) "Abutement Walls"

Exhibit M: Three typewritten pages "General Description of Project and Equipment"

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(2) Article 30 is modified to read as follows:

Article 30. The Commission reserves the right to determine at a later date what additional transmission facilities shall be included in this license as a part of this project.

(3) Article 25 of the license is modified to extend the time for the filing of a recreational use plan for Project No. 2357 to March 10, 1967.

(B) In all other respects the aforesaid application for rehearing in Project No. 2357 is denied.

Chairman White and Commissioner Bagge *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITIZENS UTILITIES COMPANY, DOCKET NO. E–7253

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued May 6, 1966)

Citizens Utilities Company (Applicant), filed an application with the Federal Power Commission on November 12, 1965, seeking an order pursuant to

Section 204 of the Federal Power Act authorizing the issuance of $9,500,000 in short-term Promissory Notes and the issuance of up to 950,000 shares of Common Stock, Series A, $1.00 par, and the issuance of up to 390,000 shares of Common Stock, Series B, $1.00 par. The Commission authorized issuance of the Promissory Notes in an order dated December 10, 1965 34 FPC 1441. This order relates to Applicant's proposed issuance of the additional shares of Common Stock.

Applicant is incorporated under the laws of the State of Delaware and furnishes one or more of the following services—electric, gas, telephone, water and ice, in parts of Arizona, Idaho, Colorado, Maine and Vermont, with its principal place of business at Stamford, Connecticut.

The Applicant proposes to split its outstanding Common Stock, both Series A and Series B, on a three-for-two basis by issuing one additional share for each two shares outstanding. To record the transaction, Applicant proposes to enter on its books a debit to Premium on Capital Stock in an amount equal to the total par value of the shares of Common Stock to be issued and to enter a credit of the same amount to Common Stock (Series A and Series B). According to the Applicant the purpose of the proposed split of Common Stock is to improve the marketability of the Applicant's stock in order to obtain more stockholders in the 100 shares and over classification. After the split each stockholder will have three shares for every two held prior to the split and will have the same proportionate interest in the Applicant after the split as before the split.

Written notice of the application has been given to the Arizona Corporation Commission, the Idaho Public Utilities Commission, the Public Service Board of the State of Vermont and to the Governor of each of those States. Notice was also published in the Federal Register on November 25, 1965 (30 F.R. 14694), stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 9, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Vermont Public Service Board filed a Notice of Intervention in this proceeding on November 26, 1965. It held a hearing on February 7, 1966, with respect to Applicant's proposed issuance of Common Stock and by an order issued April 12,. 1966, approved the transaction.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued December 10, 1965, *Citizens Utilities Company*, in Docket No. E-7253 (34 FPC 1441).

(2) The proposed issuance of up to 950,000 shares of Common Stock, Series A, and the issuance of up to 390,000 shares of Common Stock, Series B, for the purposes of effectuating a three-for-two stock split, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock, as described above, is therefore not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) Under the circumstances set forth above the issuance of the additional shares of Common Stock are exempt from the competitive bidding

requirements of Sections 34.1a(a), (b) and (c) of the Commission Regulations under the Federal Power Act.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonable, necessary and appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Common Stock, referred to above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance of Common Stock is hereby exempted from the competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days of the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE POTOMAC EDISON COMPANY OF WEST VIRGINIA, PROJECT NO. 2343

ORDER APPROVING EXHIBIT R FOR PROJECT

(Issued May 6, 1966)

On August 11, 1965, The Potomac Edison Company of West Virginia, licensee for constructed Project No. 2343, filed for Commission approval a recreational use plan for the project. The plan was filed pursuant to Article 31 of the license, 32 FPC 584.

The project, known as the Millville Hydro Station is located on the Shenandoah River in West Virginia. The recreational use plan, identified as Exhibit R consisting of a map, (FPC Project No. 2343–6) and a written text entitled "Plans for Recreational Use" shows proposed recreational development for the project. The licensee proposes to develop recreational facilities at the project, over a five year period, consisting of a campground, two parking lots, each with a boat launching ramp, fisherman's trail along the river bank, sanitary facilities, and a protective fence and markers between the dam and the powerhouse. There is, at present, no recreational development at the project.

The Departments of the Interior and Health, Education, and Welfare have recommended certain modifications of the plan in the interest of public safety and health. Licensee has agreed to adopt their respective recommendations relating to the schedule for construction of recreational facilities. Furthermore, Licensee has indicated it will comply with the additional recommendations of the Department of Health, Education, and Welfare, except with respect to the installation of sanitary facilities at the planned Big Eddy Parking Area which it believes are not necessary due to the relatively small size of the area and its principal use for boat launching and parking. While we are not requiring the inclusion of these facilities in the plan, such facilities could be required by the Commission in the future under Article 17 of the license, if the need therefor should arise.

The Commission finds:

The following designated and described recreational use plan for the project should be approved as part of the license for the project: Exhibit R—One Sheet (FPC No. 2343-6) Map of Project Area, Statement entitled: "Plans for Recreational Use".

The Commission orders:

The recreational use plan for Project No. 2343, designated and described in the above finding is hereby approved as part of the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

YUBA COUNTY WATER AGENCY, PROJECT NO. 2246

ORDER AMENDING LICENSE (MAJOR)

(Issued May 6, 1966)

Application was filed on May 4, 1964, and supplemented, by Yuba County Water Agency, licensee for proposed Project No. 2246, for amendment of the license, 29 FPC 1002, for the project to be located on Yuba River and certain of its tributaries, in Yuba, Nevada and Sierra Counties, California, and affecting lands of the United States within the Plumas and Tahoe National Forests, and utilizing the existing U.S. Corps of Engineers' Englebright Dam and Reservoir pursuant to the Act of June 25, 1938 (52 Stat. 1040).

The above-mentioned May 4, 1964 application for amendment has been revised by amendments or supplements thereto, principally an amendment filed October 6, 1965. The changes proposed in the October 6, 1965 filing, as supplemented, are designed, among other things, to make the cost of the project financially feasible.

The principal changes proposed in the May 4, 1964 and October 6, 1965 filings and supplements thereto consist of: (1) a change in the effective date of the 50-year license from May 1, 1963 to April 1, 1966; (2) an increase in the lands of the United States to be occupied by the project by about 960 acres; (3) a change in New Bullards Bar Dam from rockfill to concrete arch type with relocated spillway and eliminate the authorized New Bullards Bar power plant; (4) a reduction in the diameter of Lohman Ridge Tunnel from 14.0 to 12.5 feet and a reduction in the diameter of the Camptonville Tunnel from 15.5 to 14.5 feet; (5) the relocation of Log Cabin Dam 50 feet upstream;

(6) the elimination of the New Colgate Diversion and Timbuctoo Afterbay dams; (7) realignment of New Colgate Tunnel and an increase in its diameter from 20.0 to 26.0 feet; (8) an increase in the installed capacity of New Colgate Power Plant from 122,000 to 282,600 kw; (9) the relocation of New Narrows Plant to a point upstream with an increase in its installed capacity from 41,000 to 46,700 kw; and (10) deletion from the license of Article 36 requiring construction of fish trapping facilities at Timbuctoo Afterbay Dam which has been eliminated. The total rated capacity of the project would be increased under the proposed changes from 295,000 to 329,300 kw.

The licensee advises that the proposed changes in the project works are justified following additional investigations of foundations and materials which developed data permitting refined designs of structures and facilities and, as stated above, are necessary to improve the financial feasibility of the project. The designs of power facilities at New Bullards Bar and New Colgate were revised to utilize the combined head between those two sites more efficiently and to maximize the hydroelectric potential of Yuba River upstream from Englebright Reservoir. The revised 282,600 kw installed capacity at New Colgate replaces the presently authorized capacities of 132,000 kw at New Bullards Bar and of 122,000 kw at New Colgate and the 24,000 kw capacity at Pacific Gas and Electric Company's existing unlicensed Colgate plant, the title to which will pass to the licensee when the plant is shut down and abandoned upon commencement of water storage behind New Bullards Bar Dam.

The deletion from the project of Timbuctoo Afterbay Dam, as proposed, is justified by the fact that we are herein modifying the requirements of subparagraph (b) of license Article 33 so as to provide that the New Narrows Power Plant shall be operated in a manner consistent with the needs of fishery resources, and deletion of Timbuctoo Afterbay Dam will also justify the deletion of license Article 36 which requires the licensee to construct and maintain such facilities at the Timbuctoo Afterbay Dam for trapping and removing salmon and steelhead trout as have been approved by the Commission. The proposed increase in lands of the United States to be occupied by the project is a result of inclusion in the project area of recreational use sites, possible aggregate quarry area, and the revised layouts of the project works.

The requested new effective date of the license from May 1, 1963 to April 1, 1966 is necessary, the licensee states, due to its inability to obtain bids for the construction of the project and to the extended period of time required for geologic exploration resulting in the aforementioned design changes of project structures and facilities. The changes will delay completion of project construction to a date which, under the present license period, allows only 43 years in which to obtain power revenues for the servicing of the bonds to finance the power facilities of the project. The licensee states that unless a period of 46 years (in addition to the construction period) is authorized under the license for such bond servicing, the project cannot be financed, and the licensee points out that it has acted diligently in prosecuting all exploration, design, negotiations, and finance efforts to bring the project to the present status of having a negotiated contract for the construction of the project at a cost figure considered by the licensee to be financially feasible. In order to allow the licensee the maximum term for servicing its revenue bonds, we are herein making the effective date of the license for the project May 1, 1966.

The licensee received one bid to construct the project and this was unacceptable. The sole bidder expressed its willingness to negotiate a contract upon the licensee obtaining appropriate State legislation to negotiate a construction contract. The California Legislature gave statutory permission to negotiate and a construction contract in the amount of $142,891,459 has been negotiated, conditioned upon Commission approval of the license amendment herein applied for and upon the licensee's sale of revenue bonds.

The licensee has obtained Congressional authority in the Rivers and Harbors Act of 1965 (Public Law 89–298) for a grant of funds for the flood control features of the project, estimated by the licensee to be about $13,200,000. However, the money has not yet been appropriated. The licensee has applied for a grant from the State of California under the latter's Davis–Grunsky Act and has received approval by the California Department of Water Resources for a grant totalling $4,403,000, of which not more than $695,000 is for recreation, $397,100 is for onshore water supply systems and sanitary facilities for the initial phase of recreational development, and $3,311,000 is for fish enhancement. In addition, the licensee has negotiated contracts with Pacific Gas and Electric Company for: (1) the purchase by the licensee of Pacific's existing Bullards Bar and Colgate projects and associated water rights and (2) the sale to Pacific of Project No. 2246 power output, yielding to the licensee an annual payment of $7,700,000 for service of the debt on the project during that period of the license in which the project is capable of full operation, and a monthly payment of $25,000 for operation and maintenance of the project.

Based upon a study and analysis of the proposed changes in the project works, Commission staff has concluded that the project works as revised are stable and safe and that the project as presently proposed is financially and economically feasible.

The Department of the Army has reported that the proposed changes in the license would not alter any previous comments and recommendations made by the Corps, and no additional terms or conditions are considered necessary for inclusion in the license.

The Department of Health, Education, and Welfare has reported that vegetation permitted to be left in about the lower 300 feet (below elevation 1700 feet) of the New Bullards Bar Reservoir under a September 2, 1965 Agreement between the licensee and the California Department of Fish and Game could result in low dissolved oxygen levels, particularly with thermal stratification in the New Bullards Bar Reservoir, and that insufficient knowledge is presently available to the Department to permit prediction of such a problem in any new project reservoirs or to determine the most economic method of preventing its occurrence, and the Department recommended that the clearing plan be re-evaluated when New Bullards Bar Reservoir is constructed. In responding to HEW's report, the licensee stated that: (1) intended removal of merchantable timber and slash between elevations 1700 and 1580 feet will reduce considerably the vegetation left under the water; (2) State and Federal fish experts consider submerged vegetation beneficial to fishlife; and (3) water temperature studies by the State Department of Fish and Game indicate that thermal stratification should not be a contributing factor to low dissolved oxygen levels in New Bullards Bar Reservoir. Based upon Commission staff studies of the problem involving other licensed project reservoirs, it is believed that oxygen deficiency could occur below the thermocline even with complete reservoir clearing, but that since game fish do not inhabit such areas, such deficiency would have no adverse effects on fishery resources. In any event, releases through the multi-level outlets of the New Bullards Bar Dam can provide mixed waters for downstream flows suitable for the fish habitat, as herein required by revised license Article 40.

The Department of the Interior, in reporting on the application for amendment, pointed out that the deck of the project's New Narrows Power Plant is shown at elevation 343 feet on Exhibit L drawings of the application, whereas the spillway design flood for the possible downstream Federal Marysville Reservoir, as shown on the U. S. Corps of Engineers' report[1] would be at elevation 345 feet, and the Department suggested that liability in the event New Narrows Power Plant is inundated by flood under Marysville Reservoir operation should be clarified by a license stipulation to that effect. The licensee has advised that it will revise the deck design of New Narrows Power Plant from elevation 343 to elevation 345 feet and that it concurs in the inclusion of a license condition on the subject somewhat revised from that proposed by the Department. We consider that new license Article 59 herein will assure adequate protection to the United States.

The Department stated also that in view of the revised project features and operation, it requests either revision or deletion of the following license articles pertaining to fish and wildlife interests, namely: revision of *Article 33*, which fixes minimum streamflow schedules for maintenance of fishlife in the streams listed; revision of *Article 34*, which establishes minimum pool levels at New Bullards Bar Reservoir and Timbuctoo Afterbay Dam; and revision of *Article 40*, which provides for control of water temperatures at New Colgate Diversion Dam; deletion of *Article 35* regulating releases from Timbuctoo Afterbay Dam; and deletion of *Article 36* providing for the construction and maintenance of facilities at Timbuctoo Afterbay Dam for trapping and removing salmon and steelhead trout; and inclusion in the license of new conditions covering: (1) breaching of the existing Bullards Bar Dam; (2) financing by the licensee of a $16,500 post-project-construction study of fish conditions in Yuba River downstream from New Narrows Power Plant; (3) inclusion of fish screens in the irrigation diversion works; and (4) approval by State and Federal fish agencies of the design of the outlet works at New Bullards Bar Dam.

In commenting on the Department's request for further revisions of the license, the licensee agreed to revision of license Article 33, with minor rewording; to the revision of license Article 34; to the deletion of license Articles 35, and 36; and to the revision of license Article 40 essentially as hereinafter set forth. With respect to the Department's above-mentioned requested revision of license Article 33, we consider that any modification of streamflow schedule set forth in the article could be accomplished under the provisions of license Article 31 and therefore does not require the inclusion of condition H. to footnote "3" to Article 33 of the license, as requested by the Department.

In commenting on the Department's requested new license conditions, the licensee objected to the breaching of existing Bullards Bar Dam. The licensee pointed out that license Article 31 already provides that the Commission may require modification of project structures and operation in the interest of fish life and that the Department's requested post-project-construction study would impose additional financial liability on the licensee. In view of license Article 31, under which the Commission could require the licensee to make such a study when indicated by operating conditions, we are not including in the license the Department's requested condition for the study. The licensee pointed out that fish screens on the irrigation diversion works, as requested by the Department, are not presently required by the license and would be downstream from and outside of the project boundary. The Department has informally advised us that it has reconsidered its requests for the breaching of the existing Bullards Bar Dam and for the installation of fish screens on the irrigation diversion works, and may withdraw its requests. With respect to the Department's request for a license condition requiring fish agency approval of the design of outlet works at New Bullards Bar Dam, the licensee refers to the September 2, 1965 Agreement with California Department of Fish and Game (referred to above in HEW's report on the application) which, the licensee states, covers approval of the design of this facility and that this request of the Department is a duplication of the general requirements of license Article 40. However, inasmuch as the design of the multi-level outlet works shown on Exhibit L–38 (FPC No. 2246–92) filed for Commission approval on March 7, 1966, has not been submitted for comments by State or Federal fish agencies, we are including herein new Article 60, requiring approval by such agencies of the outlet works design a condition precedent to the start of construction thereof, even though we are herein approving the Exhibit L drawing except insofar as the requirements of Article 60 have not been met.

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[1] H. Doc. 180, 89th Cong., 1st Sess. (1965).

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Tahoe and Plumas National Forests, has advised that no additional license conditions are necessary for the protection and utilization of the National Forest lands affected by the proposed project changes.

Pursuant to Article 56 of the license, the licensee has filed for Commission approval a Recreational Use Plan, developed in cooperation with the U.S. Forest Service, describing a plan for recreation sites and facilities at eight areas on the New Bullards Bar Reservoir including an administration site, an observation point, three camping areas and three day-use areas, two of which will have boat launching facilities and one of which will have a swimming beach. Because comments on the plan have not been received from appropriate Federal and State agencies, we are not approving the plan at this time. However, by inserting in the license Article 61, we are assuring the development for both initial and future recreation needs at the project.

We are revising license Article 4 so as to conform to the article presently included in licenses for the type of project herein involved with respect to project inspection procedures. We are including herein new license Articles 58 and 62 requiring, respectively, that the licensee: (1) engage at least three qualified independent consultants to advise it on appropriate foundation treatment for project works; and (2) to measure and report to the Commission at stated intervals stress, strain, and temperature conditions within New Bullards Bar Dam and its foundation. We are revising license Article 57 to show the authorized increased installed horsepower capacity of the project as being 439,000 horsepower. Finally, we are eliminating from the license Article 30 because we are herein giving our approval to final design Exhibit L drawings for New Bullards Bar Dam and Spillway.

The Commission finds:

(1) Public notice of the application for amendment filed October 6, 1965 has been given. No protests or petitions to intervene have been received.

(2) The license for Project No. 2246, amended as hereinafter provided, is in the public interest.

(3) The authorized horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charges is by this order increased to 439,000 horsepower, and the amount of annual charges, based upon such increased capacity, to be paid under the license for the project for the costs of administration of Part I of the Federal Power Act is reasonable.

(4) Amended Exhibit J (FPC Nos. 2246–88, –89, and –90); amended Exhibit K (FPC Nos. 2246–66 through –72) insofar as the tentative project boundary and the project works are shown; amended and supplemented Exhibit L (FPC Nos. 2246–45, –47, –52, –73 through –87, –91, and –92); and Exhibit M (amended, February, 1966) filed in the Commission February 28, 1966; conform to the Commission's Rules and Regulations and should be approved as part of the license for the project to the extent indicated in paragraph (A) below.

(5) Superseded license Exhibit K (FPC Nos. 2246–8, –9, –11, –15, –32, –36, and –37); license Exhibit K (FPC No. 2246–17); superseded license Exhibit L (FPC Nos. 2246–19, –23 through –27, –29, –33, –34, and –35); and license Exhibit M filed in the Commission June 14, 1961; should be eliminated from the license for the project.

The Commission orders:

(A) The exhibits designated in finding (4) above are hereby approved as part of the license for Project No. 2246 to the extent indicated therein and the license exhibits designated in finding (5) above are hereby eliminated from the license for the project.

(B) The effective date of the license for Project No. 2246, is by this order hereby amended to be May 1, 1966.

(C) Paragraph (A) of the license is hereby amended to read as follows:

(A) This license is hereby issued to Yuba County Water Agency, of Marysville, California (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of May 1, 1966, for the construction, operation and maintenance of Project No. 2246, affecting lands of the United States within the Plumas and Tahoe National Forests and a Government dam and lands of the United States adjacent thereto; subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(D) Paragraph (B) of the license is hereby amended to read as follows:

(B) Project No. 2246 consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and application for amendment of license and which are designated and described as follows:

Exhibit	*FPC No. 2246-*	*Titled*
J–1 (Amended)	88	Yuba River Development—General Map.
J–2 (Amended)	89	Bullards Bar and Middle Yuba-Oregon Cr Diversion Project—General Map.
J–3 (Amended)	90	Colgate and Narrows Project—General Map.
K–1 (Amended)	66	Bullards Bar Project—Reservoir Map*.
through	through	
K–3 (Amended)	68	
K–4	10	Bullards Bar Project—Reservoir Map.
K–5 (Amended)	69	Bullards Bar Project—Reservoir Map*.
K–7	13	Bullards Bar Project—Reservoir Map.
K–8	14	Bullards Bar Project—Reservoir Map.
K–9 (Amended)	70	Middle Yuba—Oregon Creek Diversion Project—Log Cabin and Hour House Reservoir Map*.
K–10 (Amended)	71	Colgate Project—Detailed Map*.
K–11 (Amended)	72	Narrows Project—Detailed Map*.

*Insofar as they show the tentative project boundary and the location of project works.

(b) All project works consisting principally of:

1. A concrete arch dam, designated New Bullards Bar Dam and located on North Yuba River, about 631 feet high above streambed and about 2,320 feet long at its crest, with a gated spillway through the left abutment, creating a reservoir with gross storage capacity of 930,000 acre-feet and water surface area of 4,600 acres at normal maximum operating surface at Elevation 1,955 feet; a power pressure tunnel and penstock incorporating a surge tank and extending about 27,600 feet from a multi-level intake structure at the dam to a power plant designated New Colgate Power Plant; such power plant, located on the right bank of Yuba River downstream from the confluence of North and Middle Yuba Rivers, with total installed capacity of 282,600 kilowatts in two similar generating units;

2. A concrete arch dam, designated Hour House Diversion Dam and located on Middle Yuba River upstream from its confluence with Oregon Creek, about 77 feet high above streambed and about 335 feet long on the top axis, with an ungated, overflow type spillway centered on the dam, creating a reservoir with gross capacity of approximately 290 acre-feet and surface area of about 14 acres at normal maximum operating surface at Elevation 2,030 feet;

3. A concrete arch dam, designated Log Cabin Diversion Dam and located on Oregon Creek upstream from its confluence with Middle Yuba River, about 49 feet high above streambed and about 292 feet long at the top, with an ungated, overflow type spillway centered on the dam, creating a reservoir

with gross capacity of approximately 95 acre-feet and surface area of about 5.5 acres at normal maximum operating surface at Elevation 1,970 feet;

4. A gravity-flow tunnel, designated Lohman Ridge Tunnel and extending approximately 19,410 feet from Hour House Diversion reservoir to Log Cabin Diversion reservoir;

5. A gravity-flow tunnel, designated Camptonville Tunnel and extending approximately 6,110 feet from Log Cabin Diversion reservoir to New Bullards Bar reservoir;

6. A power pressure tunnel, designated New Narrows Power Tunnel and extending about 750 feet from an intake structure on the right bank of Yuba River immediately upstream from existing Englebright dam of the California Debris Commission to New Narrows Power Plant; such power plant, located on the north bank of Yuba River downstream from Englebright dam, with installed capacity of 46,700 kilowatts in one generating unit; and

7. A substation at each power plant; and appurtenant hydraulic, mechanical and electrical facilities and miscellaneous project works

the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and application for amendment of license:

Exhibit	*FPC No. 2246-*	*Titled "New Bullards Bar Project"*
L-14 (Amended)	73	General Arrangement.
L-15 (Amended)	74	Dam Layout and Geometric Data.
L-16 (Amended)	75	Spillway, Plan and Profile.
L-37	91	Dam, Thrust Blocks.
L-38	92	Dam, Multilevel Power Intake, except insofar as the requirements of Article 60 of the license have not been met.
L-20 (Amended)	76	*Log Cabin* Dam—General Arrangement.
L-21	45	*Camptonville* Tunnel—Plan and Profile.
L-22	77	*Hour House* Dam—General Arrangement.
L-23	47	*Lohman Ridge* Tunnel—Plan and Profile.
		"New Colgate Project"
L-24	78	Tunnel—Plan and Profile.
L 25 (Amended)	79	Powerplant—Plan Elevation 579.5.
L-26 (Amended)	80	Powerplant—Plan Elevation 562.5.
L-35	86	Powerplant—Site Plan.
L-36	87	Powerplant—Sections.
		"New Narrows Project"
L-27	81	General Arrangement.
L-28	52	General Arrangement—Sheet 2 of 2.
L-29 (Amended)	82	Power Tunnel—Profile.
L-30 (Amended)	83	Powerplant—Sections.
L-31 (Amended)	84	Powerplant—Plans.
L-32 (Amended)	85	Powerplant—Plans and Sections.

M (Amended, February, 1966) comprised of two typewritten pages entitled "General Description of Mechanical, Electrical and Transmission Equipment" filed February 28, 1966.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(E) Articles 4, 28, 33, 34, 40, and 57 of the license are hereby amended to read as follows:

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 28. The Licensee shall commence construction of the project works within one year from May 1, 1966, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction within 4½ years from May 1, 1966.

Article 33. The Licensee shall maintain the following minimum streamflow schedules for maintenance of fish life in the several streams listed:

(a) Stream	Flow (cfs)[1]		Measurement point
	Apr. 15 to June 15	June 16 to Apr. 14	
Middle Yuba (below Hour House Diversion).	50	30	Approx. 500 ft. downstream of dam.
Oregon Creek (below Log Cabin Diversion).	12	8	Approx. 500 ft. downstream of dam.
North Yuba (below New Bullards Bar).	5	5	Approx. 500 ft. downstream of dam.

[1] Or natural flow, whichever is less. Maximum 24-hour fluctuations of plus or minus 10 percent shall be permitted for flows in Middle Yuba below Hour House Diversion and in Oregon Creek below Log Cabin Diversion.

(b) Stream	Flow (cfs)[1]			Measurement Point
	Jan. 1 to June 30	July 1 to Sept. 30	Oct. 1 to Dec. 31	
Yuba River (below Daquerre Point Dam).	245	70	400	Over crest of Daquerre Point Dam and through fishway.

[1] *Provided* that these flows shall be in addition to releases made to satisfy existing downstream water rights.

(c) Water releases for fish life as specified in paragraphs (a) and (b) of this article shall be subject to the following reduction in any critical dry year, defined as a water year for which the April 1 forecast of the California Department of Water Resources predicts that streamflow in the Yuba River at Smartville will be 50 percent or less of normal:

Yuba River at Smartville Streamflow Forecast Percent of Normal	Reduction in Water Releases for Fish Life, Percent
50	15
45	20
40 or less	30

However, in no event shall releases for fish life below Daguerre Point Dam be reduced to less than 70 cfs. The critical dry year provisions herein shall be effective from the time the aforesaid forecast is available until the April 1 forecast of the following year.

(d) In addition to maintaining minimum water releases for fish life in Yuba River below Daquerre Point Dam, as specified in paragraphs (b) and (c) of this article, the Licensee shall maintain uniform and continuous releases from Englebright Dam within the limits of the following schedule:

Period	Releases (cfs)[1]	Measurement Point
Oct. 16 to 31	600-1,050	New gaging station to be built downstream from the two Narrows powerhouses.
November	600-700	
December	600-1,400	
Jan. 1 to 15	1,000-1,850	
Jan. 16 to Mar. 31	600	

[1] Provided that:
A. Variations from this schedule are permissible during emergencies, uncontrollable flood flows, and critical dry year curtailments.
B. Variations from the scheduled uniform releases of not more than 15 percent is permissible but shall be minimized whenever possible.
C. Reduction in the average continuous flow from October 15 to 31 shall be not more than 35 percent of the average flow during the preceding seven-day period and shall be minimized whenever possible.
D. Reduction in the average continuous flow from November 1 to 30 shall be not more than 15 percent of the average flow during the preceding 15-day period and shall be minimized whenever possible.
E. Increase in uniform releases during October and November shall be permitted when water storage is sufficient, provided no reduction in December releases is necessary as a result of the increases.
F. Changes in flow releases due to project operation during the period January 16 to October 15 shall not fluctuate at an hourly rate of more than 500 cfs and shall be changed as gradually as possible within the hourly period.
G. These provisions shall be subject to re-evaluation and revision at such time as Marysville or other downstream reservoir is constructed on the Yuba River.

Article 34. The Licensee shall maintain a minimum pool in New Bullards Bar Reservoir at Elevation 1,730 feet.

Article 40. Consistent with the primary purpose of the power intakes in the new Bullards Bar Dam, the Licensee shall operate, within limits of the project, the multiple-level power intakes in New Bullards Bar Dam to provide water of suitable quality in the Yuba River downstream from the New Narrows Power Plant for the production of anadromous fish as may be prescribed by the Commission upon the recommendations of the Director of the California Department of Fish and Game and the Fish and Wildlife Service, Department of the Interior.

Article 57. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations. The authorized installed capacity for such purpose is 439,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.

(F) The following additional articles are hereby included in the license:

Article 58. The Licensee shall engage at least three qualified, independent consultants for the purpose of reviewing and reporting on the foundation treatment of the New Bullards Bar arch dam and other hydraulic structures, including tunnels. The report of the consultant shall be submitted prior to the initiation of foundation treatment. The Licensee shall also submit a final report of the board covering the construction of the project upon completion.

Article 59. The Licensee shall not hold the United States liable for any damage to New Narrows Power Plant due to inundation or backwater resulting from a downstream Federal reservoir with a water surface elevation of up to and including 345 feet (U.S.G.S. datum) measured at the downstream dam, nor shall the Licensee hold the United States liable for any loss of power head or reduction in power protection due to said reservoir within the limits of a normal water surface elevation not in excess of 340 feet (U.S.G.S. datum) measured at the downstream dam.

Article 60. The Licensee shall not commence construction of the multilevel power intake at New Bullards Bar Dam until specifically authorized by the Commission following concurrence with the Licensee by the Director of the California Department of Fish and Game and by the Fish and Wildlife Service, Department of the Interior, on the location and functional design of the intake.

Article 61. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 62. The Licensee shall install instruments in the dam and foundation for the purpose of measuring foundation stresses and movements, deflections in the dam, and stresses and temperatures in the concrete, and shall submit to the Commission annually, for a period of five years after completion of construction of the New Bullards Bar Dam, reports evaluating the results of the instrumentation.

(G) Articles 30, 35, and 36 of the license are hereby eliminated therefrom.

(H) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(I) This order shall become final 30 days after the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WEST PENN POWER COMPANY, DOCKET NO. E-7276

ORDER AUTHORIZING LEASE OF ELECTRIC FACILITIES

(Issued May 9, 1966)

West Penn Power Company (Applicant), filed an application with the Federal Power Commission on March 7, 1966, seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to lease the electric facilities of the Borough of Brackenridge, (Borough), Allegheny County, Pennsylvania.

Applicant is incorporated under the laws of the State of Pennsylvania and authorized to do business in the States of Pennsylvania and West Virginia. It is an operating public utility engaged in the production, distribution and sale of electricity in the greater portion of the Counties of Armstrong, Butler, Fayette, Greene, Washington, and Westmoreland, and in parts of Allegheny, Cameron, Centre, Clarion, Clinton, Elk, Indiana, Lycoming, McKean, and Potter Counties, Pennsylvania. It interchanges power with the Monongahela Power Company in West Virginia and with the Potomac Edison Company in Maryland.

The Borough is located in Allegheny County, Pennsylvania, about 15 miles northeast of Pittsburgh and operates an isolated electric utility system within its corporate limits, which serves the Borough and its residents.

Under a lease agreement dated December 23, 1965, between the Borough and the Applicant, the Applicant proposes to lease the Borough's electric utility system for a period of 30 years from the effective date of the lease for a total rental of $2,000,000 payable as follows: $260,000 on the effective date of the lease and the balance of $1,740,000 in 29 annual installments of $60,000 each. The lease agreement also provides that within 6 months after its effective date, the Applicant shall construct facilities to connect the leased property with its interconnected system and shall give written notice to the Borough of the completion thereof. At that time the Borough's generating facilities shall cease to be a part of the leased property.

Applicant estimates that the original cost less an accumulated provision for depreciation of the Borough's steam production plant is $280,912 and that of the distribution plant is $147,145. Applicant proposes to record the entire annual amount of rent, $60,000 plus $6,667 for $\frac{1}{30}$ of the initial payment of $200,000, total $66,667 as a charge to Account 426, Other Income Deductions.

According to the application the proposed transaction will have the immediate effect of reducing the rates of 1,667 of the Borough's 1,748 customers.

The other 81 customers will receive electric service at their present rates as long as they continue to take service at their present locations. After the proposed lease is made effective, it is expected that the service to the present customers of the Borough will be improved and more reliable because Applicant with its large generating capacity is better able to take care of the growing needs of the Borough's inhabitants, and with its substantial and conveniently located resources of men, material and equipment, Applicant can restore service promptly in case of interruption.

Written notice of the application has been given to the Pennsylvania Public Utilities Commission and the Governor of that State. Notice was also published in the Federal Register on March 22, 1966 (31 F.R. 4821), stating that any person desiring to be heard or to make any protest with reference to said application should on or before April 4, 1966, file petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10), with the Federal Power Commission, Washington D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of Pennsylvania and consumed in the States of West Virginia and Maryland, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Applicant, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Applicant will indirectly merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Borough, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed lease of facilities by Applicant as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed lease by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and as proposed in the application.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GULF RESOURCES, INCORPORATED AND NATURAL GAS GATHERING COMPANY, INC., DOCKET NO. CI61-282

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 10, 1966)

On August 24, 1960, Gulf Resources, Incorporated, and Natural Gas Gathering Company, Inc.[1] (Applicants), filed in Docket No. CI61-282 an application as supplemented on February 12, 1963, and August 13, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to construct and operate facilities and transport natural gas in interstate commerce, all as more fully set forth in the application.

Applicants seek authorization to construct and operate approximately seventy-five miles of pipeline and appurtenant facilities to gather and transport natural gas to be purchased from producers thereof by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), in various fields in Starr and Zapata Counties, Texas. Applicants will deliver the gas to Tennessee in the Zim Field area, Starr County, Texas.

Estimated cost of the facilities proposed to be constructed and operated by Applicants is $2,600,000, which amount Applicants will obtain through debt and equity financing.

Applicants have submitted a pipeline type application and by letter dated November 12, 1965, they agree to accept a certificate classifying them as pipeline companies. Applicants request that their contract with Tennessee be accepted as a special rate schedule. Gas will be gathered and transported for Tennessee at a rate of 2.85 cents per Mcf at 14.65 psia.

Temporary certificates were issued August 31, 1960, and May 14, 1963, authorizing Applicants to construct and operate facilities and transport natural gas.

After due notice, petitions for leave to intervene were filed by The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company and Public Service Electric and Gas Company. Notices of intervention were filed by the Pennsylvania Public Utility Commission and the Public Service Commission of the State of New York. After a subsequent notice of the filing of the application as finally supplemented, in which notice the aforementioned parties were invited to file again if they desired to participate in this proceeding, petitions for leave to intervene were filed by The Brooklyn Union Gas Company and Consolidated Edison Company of New York, Inc., and a notice of intervention was filed by the Public Service Commission of the State of New York. Subsequently, The Brooklyn Union Gas Company filed a notice of conditional withdrawal of its petition and stated that the withdrawal should not be construed to indicate that the Petitioner considers that either the proposed transportation rate of Applicants or the total delivered cost to Tennessee of gas transported by Applicants has been established to be in the public interest. Consolidated Edison Company of New York, Inc., filed a notice of withdrawal of its petition and stated that by its withdrawal Petitioner does not waive its rights to object to future gathering system arrangements by Applicants or others. By letter the Public Service Commission of the State of New York advised the Commission that it would not object to the issuance of a certificate to Applicants "Assuming that entry of an order under the abridged, non-contested hearing procedure would not constitute a precedent in future cases involving short-haul pipeline companies * * *" No further petition for leave to intervene or notices of intervention have been received.

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[1] Natural Gas Gathering Company, Inc., is the owner of a one half interest in the proposed project and is a wholly owned subsidiary of Gulf Resources, Incorporated.

At a hearing held on May 5, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants, Gulf Resources, Incorporated, and Natural Gas Gathering Company, Inc., will be engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission and each will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon commencement of service under the authorization hereinafter granted.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of facilities and transportation of natural gas by Applicants are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicants should be required to comply with the provisions of the Natural Gas Act and the rules, regulations and orders of the Commission thereunder applicable to natural gas pipeline companies.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicants, Gulf Resources, Incorporated, and Natural Gas Gathering Company, Inc., authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued in paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas shall commence, as provided in paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act within six months from the date on which this order issues.

(D) Applicants shall comply with the provisions of the Natural Gas Act and the rules, regulations and orders of the Commission thereunder applicable to natural gas pipeline companies, and particularly,

(a) Within 45 days from the date of this order Applicants shall file pursuant to Section 154.52 of the Regulations under the Natural Gas Act a special rate schedule in a form acceptable to the Commission which shall provide a single, rolled-in, system-wide rate of 2.85 cents per Mcf for their transportation service performed for Tennessee; and to the extent that said rate schedule shall not conform to the requirements of Sections 154.32 (second sentence) and 154.33 of the Regulations under the Natural Gas Act, the requirements of said Regulations are waived;

(b) Applicants shall establish and maintain their accounts and records in accordance with the Uniform System of Accounts Prescribed for Natural Gas Companies (Class C); and

(c) Beginning with the year 1966 Applicants shall file an annual report, F.P.C. Form No. 2-A.

Before Commissioners: Carl E. Bagge, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

KANSAS GAS AND ELECTRIC COMPANY,
DOCKET NO. E-7279

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 10, 1966)

By order issued April 29, 1966, 35 FPC 649, in the above-entitled matter, the Commission authorized Kansas Gas and Electric Company (Applicant) to issue and sell at competitive bidding $16,000,000 principal amount of First Mortgage Bonds, due 1966, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on May 10, 1966, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Lehman Brothers and Salomon Brothers & Hutzler, to purchase the proposed issuance of $16,000,000, principal amount of Bonds, for the price of 100.903% of principal amount, with an interest rate of 5⅝%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued April 29, 1966, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued April 29, 1966, in the above docket.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

KENNEBEC RIVER PULP & PAPER COMPANY, INC., PROJECT NOS. 2364 AND 2365

DECLARATORY ORDER AND FURTHER ORDER ON REHEARING

(Issued May 10, 1966)

On September 16, 1965, the Kennebec River Pulp & Paper Company, Inc. (Petitioner) filed a petition, including a statement of facts, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, for a declaratory order with respect to certain provisions of license orders for Project Nos. 2364 (Abenaki) and 2365 (Anson) respectively, issued August 3, 1964 and August 11, 1964, respectively, 32 FPC 502, 580.

Applicant requests the following:

(A) A termination date for both licenses of December 31, 2003, or 50 years from the date when the Kennebec River was determined by the Commission to be navigable.

(B) The effective dates of the respective licenses be no earlier than the dates of acquisition of the respective project by Petitioner.

(C) Paragraph (C) of the respective license orders be amended by inserting therein immediately after the words "except for Article 4 thereof" the words "and that the actual cost to Applicant shall be used for the purposes of Article 11 thereof."

These aforesaid matters were initially placed in issue in an application for rehearing of the license orders, filed September 2, 1964, upon which the Commission granted rehearing for further consideration on September 30, 1964. The petition for declaratory order, together with a statement of facts, was presented to enable the Commission to dispose of the questions presented without a hearing.

Petitioner states that it purchased the Anson Development (Project No. 2365) as part of the Anson Mill, a paper mill with an integrated groundwood pulp mill, on July 11, 1955, and the Abenaki Development (Project No. 2364) as part of the Abenaki Pulp Mill which is approximately 4,000 feet downstream from the Anson Mill, on October 4, 1961. It states that when these mills were acquired they were in extremely poor condition, and that it has spent approximately $2,856,258 on a rehabilitation program for both the power facilities and the mills themselves, with a future investment for a new paper machine and auxiliary equipment estimated at $10,000,000. Petitioner further asserts that its mills provide directly and indirectly a livelihood for substantially all of the people in the towns of Madison and Anson, Maine, with a combined population of about 6,300. Petitioner avers that the power generated at these projects, which is used solely for its mills, is extremely important to its operation and that unless the license term is extended to provide sufficient time for financing future development, the existence of the mills will be threatened. It states that the power produced by the projects "is the life blood of the mills" and "without it both mills would be uneconomic and forced to close".

In the respective license orders we granted licenses for those projects with an effective date of May 1, 1954[1] and a termination date of December 31, 1993, in accordance with our decision in *Androscoggin*, Opinion No. 357[2]. The termination date in *Androscoggin*, which involved a public utility, was established on the basis of 50 years from 1943, at which time it was determined that navigability could be based on log driving and rafting[3] and subsequently affirmed in the Courts[4].

In the instant case, the termination date of December 31, 1993, gives Petitioner, an industrial company which acquired both projects subsequent to the effective date of the licenses, an effective term of approximately 38 years for Project No. 2365 and 32 years for Project No. 2364. Petitioner asserts that unless it obtains a 50 year license term it will be unable to undertake necessary rehabilitation of its mills, vital to the future existence of the company. While the expenditures contemplated are primarily for the improvement of its mills and include the installation of a new modern competitive paper machine, Petitioner demonstrates that the continued existence of the projects are of the utmost importance to its operation and to the economy of the area. It is apparent, in considering the termination date of the licenses, that Petitioner is faced with a potentially greater problem at the expiration of its license, in event of recapture, than that which would face an electric utility under similar circumstances. Although both would recover the net investment in the project, Petitioner's recovery would represent only a part of its total investment in its paper producing enterprise which in the absence of suitable substitute source of power would be rendered practically valueless at the end of the license term. We believe that petitioner has made an adequate showing in support of its request for a 50 year license term. Accordingly, we shall extend the license terms for Project Nos. 2364 and 2365 to April 30, 2004, 50 years from the effective dates of the respective licenses.

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[1] The Commission made a specific determination that the Kennebec River was navigable on May 21, 1954. *Central Maine Power Company*, Docket No. E–6456 (13 FPC 1076).

[2] *Public Service Company of New Hampshire*, Project No. 2288, 27 FPC 830.

[3] *City of Spooner, Wisconsin*, 3 FPC 986 (April 20, 1943); *Wisconsin Michigan Power Company*, 3 FPC 449 (July 27, 1943); *Wisconsin Public Service Corporation* (Tomahawk, 3 FPC 495 (July 30, 1943)).

[4] *Wisconsin Public Service Corporation v. F.P.C.*, 147 F. 2d 743 (CA7–1945), cert. den., 325 U.S. 880 (1945).

Petitioner has also requested that the Commission change the effective date of the licenses, contending that, unless the effective date is changed, it will be required to pay past due annual charges from May 1, 1954 on. It asserts that this would be unfair, since both projects were owned by other companies for part of the time, about a year in the case of Project No. 2365 and seven years four months in the case of Project No. 2364. While admittedly, the payment of annual charges is related to the effective date of a license, it is not the controlling factor in its determination. Consistent with our decision in *Androscoggin*, we have consistently backdated licenses issued for constructed projects in order to insure that licensees have the same rights and obligations as they would have had if timely declarations of intention or applications for license had been made. This practice has been supported by the United States Court of Appeals for the First Circuit in *Central Maine Power Company* v. *F.P.C.*, 345 F. 2d 875 (May 18, 1965)[5]. We, therefore, conclude that the effective date prescribed by the Commission for both Project Nos. 2364 and 2365, under the circumstances presented herein, is appropriate.

Petitioner further requests that its actual cost be used as the basis for determining the actual legitimate original cost as required by Article 11 of Form L-3, incorporated as part of the respective license orders. It submits that in the case of Project No. 2364, which it purchased in 1961, there are no records and the depreciated value is presumably zero; and in the case of Project No. 2365, which it purchased in 1955, the remaining undepreciated book cost represents about 25% of its purchase price.

Article 11 of the license for Project No. 2364 and Project No. 2365, respectively, makes the following provision for determination of the project cost (30 FPC 1658, 1659):

> The actual legitimate original cost, estimated where not known, and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the [Federal Power] Act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

Section 4(b) of the Federal Power Act provides that each licensee shall file a statement showing the "actual legitimate original cost of construction of * * * project, addition, or betterment" for the purpose of aiding the Commission in determining the "actual legitimate original cost" (ALOC) of a licensed project. ALOC has been construed by both the Commission and the courts to relate to the construction of a project (and any additions or betterments) rather than to the acquisition of a project. See *Louisville Hydro-Electric Company, Licensee*, 1 FPC 130, 139 (1933), petition for review dismissed *sub. nom. Louisville Gas & Electric Co.* v. *F.P.C.*, 129 F. 2d 126 (CA6–1942), cert. den. 318 U.S. 761, rehearing den. 318 U.S. 800; *Alabama Power Co.* v. *F.P.C.*, 134 F. 2d 602, 606 (CA5–1943), affirming (with modifications on other issues) *Alabama Power Company, Licensee*, 2 FPC 432 (1941); and *Niagara Falls Power Co.* v. *F.P.C.*, 137 F. 2d 787, 794 (CA2–1943), cert. den. 320 U.S. 792, rehearing den. 320 U.S. 815, affirming (with modifications on other issues) *The Niagara Falls Power Company, Licensee*, 3 FPC 206 (1942). It should also be noted that section 8 of the Act provides that any successor licensee "shall be subject to all the conditions of the license * * * and * * * to all the provisions and conditions of this Act to the same extent as though such successor * * * were the original licensee hereunder * * *." Significantly, neither Section 4(b) nor Section 8 of the Act makes any distinction in its requirements between licensees which are engaged primarily in the electric utility business, on the one hand, and licensees which are engaged primarily in non-utility operations, such as manufacturing, on the other hand.

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[5] See also, Commission Opinion No. 481, issued November 15, 1965, in 34 FPC 1298, in the *Niagara Mohawk Power Company* case.

To determine the ALOC of a project owned and operated by an electric utility licensee (or its successor in interest) on the basis of the cost of construction of its project (and additions and betterments), while at the same time determining the ALOC of a project owned and operated by an industrial licensee (or its successor in interest) on the basis of the cost of acquisition of its project (and additions and betterments) might result in discriminatory treatment as between the two types of licensees. Under Section 3(13) of the Federal Power Act, the ALOC represents a major component of a licensee's "net investment" in a project. Therefore, in the event of the take over of any project by the United States upon payment of the licensee's "net investment" therein under Section 14 of the Act, uniform treatment under Sections 3(13) and 4(b) of the Act would not be achieved. Furthermore, to the extent that the project acquisition costs reflect payments for intangible elements, the allowance of such payments in determining ALOC and "net investment" would obviously violate Section 14's prohibition against including "good will, going value, or prospective revenues" in "net investment". Under these circumstances we believe that it is unnecessary and inappropriate to modify the provisions of Article 11 of the license for each project.

In a letter to the Commission dated March 29, 1965, the Petitioner, in connection with its application for rehearing, requested that the payment of annual charges commence on the date that the license orders were issued. Section 11.28 of the Commission Regulations under the Federal Power Act provides that annual charges shall commence on the effective date of the license. Accordingly, our determination with respect to the effective date of the respective licenses is dispositive of this issue.

In its application for rehearing petitioner requested that Articles 31 and 32 be deleted from the license order for Project No. 2364. In its letter of September 16, 1965, transmitting the petition for declaratory order, Petitioner has stated that it would accept as a substitute for Articles 31 and 32, a license condition providing that the licensee shall develop the undeveloped head in the stretch of the Kennebec River immediately downstream from the Abenaki project extending to the head of the Weston Project (No. 2325) reservoir as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing. Upon further consideration of the matter we conclude that such provision would satisfactorily provide for future development opportunities in order to achieve comprehensive development of the River.

The Commission finds:

(1) It is appropriate and consistent with the public interest that the Order in Project Nos. 2364 and 2365 be modified as hereinafter provided.

(2) It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a—825r) that the Kennebec River Pulp & Paper Company's petition for declaratory order filed September 15, 1965 and application for rehearing filed September 2, 1964 with respect to license orders issued August 3, 1964 and August 11, 1964, respectively, for

Project Nos. 2364 and 2365 to the extent that it seeks modification in addition to that provided herein be denied.

The Commission orders:

(A) Orders issuing licenses for Project Nos. 2364 and 2365 are hereby modified as follows:

(1) Paragraph (A) of the license order for Project No. 2364 is modified to read as follows:

(A) This license is hereby issued to Kennebec River Pulp & Paper Company, Inc. (licensee of New York, N.Y.) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective May 1, 1954 for the continued operation and maintenance of the Abenaki Development (Project No. 2364), located on the Kennebec River, a navigable water of the United States, in Somerset County, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(2) Paragraph (A) of the license order for Project No. 2365 is modified to read as follows:

(A) This license is hereby issued to Kennebec River Pulp & Paper Company, Inc. (licensee of New York, N.Y.) under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective May 1, 1954, for the continued operation and maintenance of the Anson Development constituting Project No. 2365, located on the Kennebec River, a navigable water of the United States, in Somerset County, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of the license, and subject to such rules and regulations as the Commission has issued or prescribed thereunder.

(3) Articles 31 and 32 of the license order for Project No. 2364 are deleted and the following article is substituted therefor:

Article 35. The licensee shall develop the undeveloped head in the stretch of the Kennebec River immediately downstream from the Abenaki project extending to the head of the Weston project (No. 2325) reservoir as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

(B) In all other respects the relief requested in the aforesaid petition for declaratory order and the application for a rehearing in Project Nos. 2364 and 2365 is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS COMPANIES—EMERGENCY PLANNING—ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS, DOCKET NO. R-257

ORDER GRANTING EXEMPTION

(Issued May 10, 1966)

Valley Gas Transmission, Inc. (Valley Gas) by letter dated November 12, 1965, requested that it be excused from complying with the requirements of Order No. 303, 34 FPC 536. In support of its request, which we will consider as a petition filed pursuant to § 1.7(b) of the Rules of Practice and Procedure, Valley Gas suggested that the regulation is not intended to apply to small gathering companies having numerous non-integrated gathering systems; that it has 17 separate gathering lines delivering gas to 3 major interstate pipeline companies; that the total capability of all 17 systems could exceed 100,000 Mcf per day, although its existing sales commitments do not exceed that figure; that the information required by the report will be reported by its present purchasers, resulting in an overlap of reporting. Our records indicate that Valley Gas' description of its operations is accurate.

The Commission finds:

Good cause has been shown for granting the exemption requested.

The Commission orders:

The request of Valley Gas to be excused from complying with the requirements prescribed by Order No. 303 as amended by Order No. 303-A, *infra*, is granted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS COMPANIES—EMERGENCY PLANNING—ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS, DOCKET NO. R-257

ORDER NO. 303-A

PRESCRIBING SYSTEM FLOW DIAGRAMS

(Issued May 10, 1966)*

By order issued October 14, 1965 (34 FPC 1158, 30 F.R. 13359), we granted reconsideration of Order No. 303, issued August 19, 1965 (34 FPC 536, 30 F.R 11101) in which we amended our regulations by prescribing a system flow diagram to be filed by certain large natural gas pipeline companies subject to the provisions of the Natural Gas Act. In the October order we also extended the filing date for the initial submission of the diagram to "a date to be fixed hereafter."

We have given further careful consideration to the points raised in the application for reconsideration and, in the light of the arguments advanced, have revised several of the subparagraphs included in paragraph (b) of § 260.8 as it was prescribed in Order No. 303. We recognize that the submission of the detailed information to be required is, to some extent, duplicative and that its preparation imposes a significant burden upon the companies required to report. We are still of the opinion, earlier expressed in our original order herein, that the information is necessary for regulatory purposes and that the public interest in this regard more than compensates for the added burden. Furthermore, the modifications of the original proposal which were incorporated in Order No. 303, together with those additional changes we are now adopting, make the burden as light as possible and yet at the same time supply information consistent with our minimum needs.

One reason for granting reconsideration of our original order was to provide the time necessary to complete the steps being taken in compliance with the

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*Published in the Federal Register on May 18, 1966 (31 F.R. 7226).

Federal Reports Act of 1942 (5 U.S.C. 139c). Those steps have now been completed and the Bureau of the Budget has approved the collection of the information in the form here being prescribed. Items 12, 13 and 14 of that information (§ 260.8(b)(12), (13), and (14)) are subject to reapproval after one year.

Two other matters should be noted. First, Order No. 303 and our order granting reconsideration both contemplated that the initial report would cover the calendar year 1964. In view of the fact that reports will be required annually, our purposes will be served by having the initial report cover calendar year 1965 and, though succeeding reports will be due by June 1 of each year, we are providing that the initial report be filed by June 30, rather than June 1, 1966.

Finally, we recognize that the impact of the reporting burden will be heavier on some companies than on others due, mainly, to the diverse nature of system operations. The Bureau of the Budget, therefore, has asked us to remind the respondents of the provisions of § 1.7(b) of our Rules of Practice and Procedure (18 CFR 1.7(b)), pursuant to which we will entertain a petition to amend or waive rules. This rule provides the means whereby companies with unusual circumstances may apply for relief in connection with any of the detailed requirements of the report upon an adequate showing of a need for the relief requested. Such a petition is now pending before us and is being granted by separate order.

Upon further consideration of the matter, the Commission *finds*:

(1) Section 260.8(b) of the Regulations under the Natural Gas Act prescribed by Order No. 303 issued August 19, 1965 herein should be revised for the reasons set forth above and in the manner hereinafter provided.

(2) For convenience, it is appropriate that paragraph (a) of § 260.8 and those subparagraphs of paragraph (b) which are not revised hereby be published together with the revised portions referred to above and, therefore, that the ordering paragraphs (A) and (B) of Order No. 303 be revised and adopted as hereinafter provided.

(3) From the circumstances referred to in the recitals set forth above, it it unnecessary in the public interest that further notice be had prior to the adoption of the revised regulations, and good cause exists for making it effective forthwith.

The Commission, acting pursuant to the authority heretofore set forth in Order No. 303, *orders:*

(A) Ordering paragraphs (A) and (B) of Order No. 303, issued herein on August 19, 1965 (34 FPC 536, 30 F.R. 13359), are deleted and the following is inserted in lieu thereof.

(A) Part 260, Statements and Reports, Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new § 260.8 to read as follows:

§260.8 System flow diagrams.

(a) Each Class A natural gas pipeline company, having a system delivery capacity in excess of 100,000 Mcf per day (measured at 14.73 psia and 60° F.), shall file with the Commission by June 1 of each year twelve (12) copies of a diagram or diagrams reflecting operating conditions on its main transmission system during the previous twelve months ended December 31. For purposes of system peak deliveries, the heating season overlapping the year's end shall be used. Facilities shall be those installed and in operation on December 31 of the reporting year. All volumes shall be reported on a uniform stated pressure and temperature base.

(b) The diagram or diagrams shall include the following items of information:

(1) Nominal diameter (inches) of each pipeline.

(2) Miles of pipeline (to nearest 0.1 mile) between points of intake, delivery, river crossings, storage fields, cross-overs, compressor stations and connections with other pipeline companies.

(3) Direction of flow in the pipelines. If direction of flow can be reversed at compressor stations, so indicate.

(4) Maximum permissible operating pressure for each pipeline at discharge side of each compressor station, or other critical point, determined by the provisions set forth in the American Standards Associations publication B 31.8 "Gas Transmission and Distribution Piping System" or by the company's own standard (whichever governs the company's operation), provided that the company supplies an explanation of the standard used. Where company standard governs, so designate by appropriate symbol or legend.

(5) Total horsepower of compressor engines installed at each compressor station.

(6) Designed suction pressure for each compressor station, psig.

(7) Designed discharge pressure for each station, psig.

(8) Maximum volume, Mcf per day that can be compressed at each compressor station under conditions of suction and discharge set forth in (6) and (7) above. If direction of flow affects these factors provide the information for each direction of flow.

(9) The fuel requirement at each compressor station under conditions described in (8).

(10) Pressure in the pipeline at points of emergency interconnection with other pipeline companies which can normally be expected to exist, and the volume which could be delivered or received at such emergency interconnection points at such pressures. Give the name of the interconnecting company.

(11) For each storage field, connected to the system and operated by the respondent pipeline company, the maximum dependable daily and seasonal withdrawal volumes available under normal conditions of operation.

(12) The average and maximum (coincidental and noncoincidental) daily volumes delivered at each take-off point during the reporting year. Where deliveries to a single customer are made at two or more points and conjunctive billing is used to determine charges, the volumes delivered shall be reported on the conjunctive basis. Small deliveries (less than 100 Mcf per day) which have little or no effect upon the operation of the pipeline may be grouped in an appropriate manner, *i.e.*, between compressor stations or the last mainline compressor station and the end of the pipeline. If an estimate is used for a delivery, so indicate.

(13) The average daily volume received at each intake point to the transmission pipeline system.

(14) The volume received into the transmission pipeline system at each intake point on the day of maximum coincidental delivery.

(15) The information required by subparagraphs (12), (13) and (14) may be furnished in tabular form, or by reference to FPC Form No. 2, providing, that the information is suitably keyed to the diagram(s) by appropriate identifying symbol or number.

[Secs. 4, 5, 7, 16, 52 Stat. 823, 824, 825, 830; 15 U.S.C. 717c, 717d, 717f, 717o.]

(B) This amendment shall be effective initially for the reporting year 1965 except that the last day for filing the flow diagrams depicting 1965 operations is postponed to June 30, 1966.

(B) In all other respects the provisions of Order No. 303 remain in full force and effect.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-180

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING ABANDONMENT

(Issued May 10, 1966)

Tennessee Gas Transmission Company (Tennessee) on December 3, 1965, filed, pursuant to subsections (b) and (c) of Section 7 of the Natural Gas Act an application for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities as described in the application. The application was supplemented on February 1, 1966 to reflect changed market requirements of a group of Tennessee's customers, *i.e.* Consolidated Natural Gas Company and certain of its subsidiaries. Tennessee seeks a certificate to construct and operate the following facilities, all as more fully described in the application and testimony and exhibits of record.

262.37 miles of 36-inch loop line in Mississippi, Alabama, Tennessee, Kentucky, Ohio and Pennsylvania, 36.67 miles of 36-inch pipe between stations 527 and 524 in South Louisiana, 8.48 miles of 42-inch loop line in Kentucky, 60.16 miles of 30-inch loop lines in Ohio, Pennsylvania and New York, 10.68 miles of 26-inch loop line in West Virginia, 22.61 miles of 20-inch pipeline lateral to the Grand Isle Block 43 Field, 4.07 miles of 8-inch and 2.57 miles of 6-inch pipeline replacing equivalent lengths of 4-inch and 3-inch lateral line in New England, and 21,500 additional compressor horsepower in seven existing compressor stations.

Tennessee also seeks permission and approval to abandon its Scofield Bay Compressor Station No. 526A in Louisiana consisting of five 1,000 horsepower compressor units.

Construction and operation of the proposed facilities will increase Tennessee's average day system capacity from 3,027,000 Mcf to 3,203,000 Mcf or by 176,000 Mcf per day. 111,891 Mcf of the added capacity will be utilized to increase deliveries to contract demand and general service customers. The remainder of the added capacity will increase Tennessee's unallocated capacity. The total unallocated capacity that will be available to Tennessee after construction of the facilities in question will be 81,177 Mcf per day.

The Scofield Bay Compressor Station No. 526A, sought to be abandoned, is no longer needed to meet demands on this segment of Tennessee's system.

The estimated cost of the proposed facilities is $82,465,000, the construction of which will be financed through the sale of First Mortgage Pipe Line Bonds, Debentures and Second Preferred Stock.

Notice of the filing of the application was issued on December 13, 1965 and was published in the Federal Register on December 18, 1965 (30 F.R. 15684).

By order issued March 18, 1966, 35 FPC 398, Tennessee was granted temporary authority to construct, but not to operate, the facilities proposed in this docket. That order also provided for the commencement of hearings on April 25, 1966.

At those hearings testimony and exhibits were introduced by Tennessee and were received into evidence without objection; cross-examination of such evidence was waived by all parties. Additionally, a stipulation was entered into by all parties present at the hearing providing that a certificate should issue to Tennessee in this docket subject to certain conditions contained in that stipulation. The record in the proceeding was certified to the Commission by Presiding Examiner William L. Ellis.

The proposed conditions contained in the stipulation, in brief, provided:

(1) The proposal to increase East Tennessee Natural Gas Company's Maximum Contract Quantity would be reduced by 13,562 Mcf until such time as the Commission decides the proceedings involving East Tennessee's application in Docket No. CP65–66.

(2) The certificate issued shall not be considered as a prejudgment of the issues involved in Docket No. R–293, "Provision For Reserve Capacity in Natural Gas Pipeline Company Certificate Applications."

(3) During the period through October 30, 1966, without specific permission from the Commission, Tennessee will not sell gas under its Rate Schedules R, SR, TWS, ERS, or under the excess withdrawal provisions of Rate Schedules SS–5 and SS–E; except that such sales can be made of such amount of gas that cannot be moved beyond Tennessee's Compressor Station 200.

(4) From November 1, 1966 through March 31, 1968 Tennessee, without specific permission from the Commission, will not make sales under such rate schedules unless its top storage inventories are at specified levels at the end of the then preceding month; except, however, that such sales can be made of such amount of gas that cannot be moved beyond Tennessee's Compressor Station 200.

(5) Tennessee will each month report to the Commission (a) its top storage inventory balance as of the end of the month and (b) sales of gas under Rate Schedules R, SR, TWS, ERS and under the excess withdrawal provisions of Rate Schedules SS–5 and SS–E.

(6) No determination shall be made in this proceeding of the propriety of the proposed accounting treatment of the abandonment of Compressor Station No. 526A.

During the 1965-66 winter heating season Tennessee experienced a critical gas delivery situation due primarily to the lack of adequate underground storage inventories. At the end of that heating season (March 31, 1966) Tennessee had a negative top storage inventory of 8,500,000 Mcf.[1] In addition to its use of substantial quantities of base storage gas to meet deliveries, Tennessee was able to purchase 3,400,000 Mcf of gas from Texas Eastern Transmission Corporation and to receive on a loan basis a total of 2,500,000 Mcf from the Columbia Gas System, Transcontinental Gas Pipe Line Corporation, and TransCanada Pipe Lines Limited.

The critical gas delivery situation occurred in the last two weeks of January 1966 when Tennessee's entire system was blanketed with extremely cold weather. As a result, Tennessee had to withdraw from storage 2,200,000 Mcf more gas during January than had previously been scheduled in that month, which was at a time when Tennessee's gas storage inventories already were quite low.[2] Tennessee listed a number of reasons to indicate the reason for its having had inadequate storage inventories:

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[1] At the end of February 1966 Tennessee had a negative top storage inventory of 8,966,000 Mcf.

(1) In the early spring of 1965 Tennessee experienced an unexplained increase in pressure drop across the Lake Borgne crossing of its Delta-Portland Line which had the effect of decreasing the capacity of that line until facilities to remedy such situation were installed. Those facilities were completed on November 19, 1965 pursuant to Commission authorization in Docket No. CP65–321, 33 FPC 1302.

(2) On March 4, 1965 Tennessee experienced a pipeline rupture on the Natchitoches-Portland portion of its mainline system and as a result it reduced the operating pressure on that portion of its system thereby causing a decrease in the volume of gas which could be transported on a portion of its system during the winter heating season. Facilities to remedy this situation, which were authorized in Docket No. CP66–54, 34 FPC 1060, were not completed until November 25, 1965.

(3) Due to unforeseen delays, primarily due to an extreme shortage of skilled labor, certain of Tennessee's facilities to be installed during the summer of 1965 were not completed until late in 1965. Consequently, as a result of these delays and the delays discussed in the preceding paragraphs, Tennessee was without anticipated pipeline capacity during a period of time when it was injecting gas into underground storage. These construction delays resulted in a loss in storage injection volumes of approximately 2,200,000 Mcf.

(4) Tennessee's customers' actual natural gas requirements exceeded their estimates by approximately 7,500,000 Mcf during 1965.

(5) A hurricane and a tropical storm during the fall of 1965 reduced storage gas injections by approximately 3,000,000 Mcf.

(6) Freeze-offs in the gas supply area and other gas supply problems in January, 1966 resulted in a loss in system throughout volume of approximately 600,000 Mcf.

(7) Tennessee experienced abnormal outages of vital compressor units due to mechanical problems which caused a reduced system throughout of approximately 1,000,000 Mcf during the 1965-66 winter heating season. Remedial steps are being taken to solve the problems encountered with such units in order to assure dependable and satisfactory service.

Furthermore, as is apparent on the record, at the end of the 1964-65 winter heating season Tennessee had a negative top storage inventory of 7,064,000 Mcf. This substantial negative top storage inventory at the end of that winter heating season and at the beginning of the 1965 gas storage injection season obviously accounted in large part for the inadequate storage inventory at the beginning of the 1965-66 winter heating season. Also, Tennessee has had negative top storage inventories at the beginning of its gas storage injection seasons in 1962, 1963 and 1964 due to a variety of causes relating to storage and system operations.

The stipulation contains the following language stating Tennessee's intentions with respect to achieving adequate underground storage inventories in the future:

In view of the fact that Tennessee experienced, during the 1965–66 winter heating season, a critical gas delivery situation due primarily to the lack of adequate underground storage inventories, it is Tennessee's intention to exercise maximum effort in the coming months to achieve the top storage inventories set forth in Tennessee's Exhibit T–15 in this proceeding. Tennessee therefore has no intention to make sales of gas during the 1966 injection season under Rate Schedules R, SR, TWS, ERS, or under the excess withdrawal provisions of Rate Schedules SS–5 and SS–E, if such gas can be injected into its underground storage fields. Additionally, Tennessee has no intention to make sales of gas during the 1967 injection season under Rate Schedules R, SR, TWS, ERS, or under the excess withdrawal provisions of Rate Schedules SS–5 and SS–E, if such gas can be injected into, and is required for injection into, its underground storage fields.

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[2] At the end of December 1965 Tennessee's top storage inventory was only 1,422,000 Mcf.

The evidence of record shows that, if Tennessee achieves the top storage inventory shown as being attained in its exhibits at the beginning of the 1966–67 winter heating season and assuming full utilization of the 81,177 Mcfd of unallocated capacity during that heating season, Tennessee will be able to meet its customers' requirements during that season, including coverage for a colder than normal winter, without requiring withdrawal from its base storage. Tennessee has shown that the top storage inventory required as of the beginning of the 1967–68 winter heating season, including coverage for a colder than normal year, is 27,000,000 Mcf assuming that 17,800 Mcfd of unallocated pipeline capacity is also available. The scheduled monthly storage inventories which Tennessee, intends to maintain and which are listed in the conditions contained in ordering paragraphs (F) through (H) below are designed to provide adequate storage inventory levels to meet Tennessee's obligations and to provide an end of withdrawal season top storage inventory of zero.

Tennessee has demonstrated a need to construct and operate the proposed facilities in the manner proposed. Therefore, we find that the public convenience and necessity require that a certificate of public convenience and necessity be issued subject to the terms of the stipulation entered into by the parties to the proceeding.

The Commission further finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in *Tennessee Gas Transmission Co.*, Docket No. G–910 (6 FPC 777).

(2) The facilities to be constructed hereinbefore described, as more fully described in the application and evidence in this proceeding are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Tennessee are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) Tennessee is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Tennessee and the proposed abandonment of facilities are required and permitted by the public convenience and necessity and a certificate and approval therefor should

be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) (c) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) The stipulation entered into by Tennessee, various of the interveners, and the staff of the Commission and put into the record on April 29, 1966 in Docket No. CP66-180 is hereby accepted and approved.

(B) A certificate of public convenience and necessity is issued authorizing Tennessee to construct and operate the proposed facilities to sell and deliver natural gas as hereinbefore described, all as more fully described in the application and evidence in this proceeding, upon the terms and conditions of this order.

(C) Tennessee is granted permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application and evidence in the proceeding.

(D) The authorization to increase East Tennessee Natural Gas Company's Maximum Contract Quantity is limited to a volume of 13,562 Mcf per day less than that proposed by Applicant until such time as East Tennessee is certificated in Docket No. CP65-66 to render additional service to Chattanooga Gas Company. If East Tennessee's application at Docket No. CP65-66 is denied, the 13,562 Mcf reduction in East Tennessee's proposed Maximum Contract Quantity will be considered as unallocated peak day capacity on Tennessee's system.

(E) The certificate issued herein shall not be considered as a prejudgment of the issues involved in Docket No. R-293, "Provision for Reserve Capacity in Natural Gas Pipeline Company Certificate Applications".

(F) Without specific permission from the Commission, Tennessee shall make no sales under Rate Schedules R, SR, TWS, ERS, or excess withdrawal provisions of Rate Schedules SS-5 and SS-E prior to November 1, 1966; *Provided*, however, that sales under such rate schedules may be made of such amount of gas which Tennessee is reasonably convinced cannot be moved beyond its Compressor Station No. 200.

During the period November 1, 1966 through March 31, 1967, Tennessee shall be permitted to make sales under such rate schedules of 1,300 MMcf each month plus or minus the amount of excess or deficiency, as the case may be, in top storage inventory based on the top storage inventory for the month ending prior to such sales as shown below:

October, 1966	16,989 MMcf
November, 1966	16,082 MMcf
December, 1966	11,344 MMcf
January, 1967	6,460 MMcf
February, 1967	1,750 MMcf
March, 1967	0 MMcf

Any sales of gas under such rate schedules as contemplated above shall be made so as to be consistent with the maintenance of the specified top storage inventory for the end of the then current month.

(G) Without specific permission from the Commission, Tennessee shall make no sales under Rate Schedules R, SR, TWS, ERS, or excess withdrawal provisions of Rate Schedules SS-5 and SS-E during the months of April through October, 1967; *Provided*, however, that sales under such rate schedules may be made if

Tennessee has had the following volumes of gas in top storage at the end of the immediately preceding month:

March, 1967	0 MMcf
April, 1967	2, 569 MMcf
May, 1967	6, 318 MMcf
June, 1967	10, 752 MMcf
July, 1967	15, 621 MMcf
August, 1967	20, 244 MMcf
September, 1967	24, 012 MMcf
October, 1967	27, 000 MMcf

and provided further that additional sales under such rate schedules may be made of such amounts of gas which Tennessee is reasonably convinced cannot be moved beyond its Compressor Station No. 200.

(H) During the period November 1, 1967 through March 31, 1968, Tennessee shall be permitted to make sales under such rate schedules of 1,300 MMcf each month, plus or minus the amount of excess or deficiency, as the case may be, in top storage inventory based on the top storage inventory for the month ending prior to such sales as shown below:

October, 1967	27, 000 MMcf
November, 1967	23, 624 MMcf
December, 1967	16, 155 MMcf
January, 1968	9, 210 MMcf
February, 1968	2, 646 MMcf
March, 1968	0 MMcf

Any sales of gas under such rate schedules as contemplated above shall be made so as to be consistent with the maintenance of the specified top storage inventories for the end of the then current month.

(I) The conditions set forth in ordering paragraphs (F), (G), and (H) shall not be construed as prohibiting Tennessee, upon a proper showing, from requesting the Commission to either modify or remove such conditions.

(J) With respect to the conditions set forth in paragraphs (F), (G), and (H) above, Tennessee will, on or before the 15th of each month, report to the Secretary of the Commission (1) its top storage inventory balance as of the end of the month immediately preceding such report, and (2) any sales of natural gas made during the immediately preceding month under Rate Schedule R, SR, TWS, ERS and under the excess withdrawal provisions of Rate Schedules SS-5 and SS-E, showing the specific rate schedule under which each such sale was made, the customer to whom the sale was made, and the volumes of natural gas sold.

(K) Permission for, and approval of, the abandonment of facilities shall not be construed as Commission approval or disapproval of the proposed accounting treatment contained in Exhibit Y to the application in Docket No. CP66-180.

(L) The certificate issued by paragraphs (B) and (C) above and the rights granted thereunder are conditioned upon Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c), and (e) of Section 157.20 of said Regulations.

(M) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (B) above shall commence, as provided by paragraph (b) of Section

157.20 of the Commission's Regulations under the Natural Gas Act, within 8 months from the date on which this order issues.

(N) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (C) above within ten days of such abandonment.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66–191

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF SERVICE

(Issued May 10, 1966)

On December 13, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66–191 an application as supplemented on February 28, 1966, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon the natural gas transportation service performed for Tennessee Gas Transmission Company (Tennessee) and for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline facilities, as more fully set forth in the application.

On January 22, 1946, Applicant commenced the natural gas transportation service for Tennessee between the Carthage Field, Panola County, Texas, and West Monroe, Louisiana. On January 20, 1965, Tennessee advised Applicant that it did not wish to extend the term of the transportation agreement beyond its expiration date of January 22, 1966. The service involved the transportation of 121,300 Mcf of natural gas per day a distance of 143 miles pursuant to Applicant's Rate Schedule T–1.

Tennessee no longer requires the transportation service. Applicant therefore proposes to abandon the service but will retain in place the existing sales meter and related facilities for use in connection with an emergency exchange agreement with Tennessee (Applicant's Rate Schedule X–15).

Applicant states that upon termination of the transportation service for Tennessee its 20-inch Carthage-Longview and 18-inch Champlin Oil & Refining Company pipelines will be better utilized and more efficiently operated if a tie-over between the lines is constructed. Applicant requests authorization to construct 20 feet of 10-inch pipeline tie-over between the above-mentioned pipelines in Panola County, Texas. The proposed tie-over will, in effect, loop a portion of the Carthage-Longview Line and enable Applicant to better utilize this pipeline.

The estimated cost of construction of the proposed tie-over pipeline is $5,668, which will be financed out of current working funds.

Due notice of the filing of the application was published in the Federal Register on December 30, 1965 (30 F.R. 16286). On January 4, 1966, Tennessee filed a petition to intervene stating that it had no objection to disposal of the application pursuant to the shortened procedure provided for by Section 1.32(b) of the Commission's Rules of Practice and Procedure, but merely wished to be advised in the event of a formal hearing. No other petition to intervene, protest or notice of intervention has been filed in this proceeding.

At a hearing held on May 5, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(6) The service to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, is subject to the jurisdiction of the Commission and abandonment of such service by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment, as hereinbefore described and as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, United Gas Pipe Line Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation as authorized in paragraph (A) above within 60 days from the date of this order, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) Permission for and approval of the abandonment by Applicant of the transportation service hereinbefore described, as more fully described in the application in this proceeding, are granted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WESTERN KENTUCKY GAS COMPANY AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-295

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 10, 1966)

On March 21, 1966, Western Kentucky Gas Company (Applicant) filed in Docket No. CP66-295 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Respondent) to establish an additional point of physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 239 Mcf of natural gas per day for resale and distribution in the City of Hustonville, Lincoln County, Kentucky, as more fully set forth in the application.

Applicant will construct and operate a natural gas distribution system in the City of Hustonville, Lincoln County, Kentucky, consisting of 11,500 feet of 2$\frac{3}{8}$-inch O.D. pipeline extending from Respondent's main pipeline situated approximately 0.3 mile north of Hustonville to and through the proposed service area, 1,500 feet of 1$\frac{5}{16}$-inch O.D. pipeline in the service area, a regulator station and appurtenant valves and fittings. Respondent will install a meter.

Applicant estimates that the volumes of natural gas required for service to Hustonville during the first three years of proposed operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	13,307	16,263	19,758
Peak day (Mcf)	162	197	239

The gas is to be purchased by Applicant from Respondent under Respondent's GS-2 Rate Schedule.

The estimated cost of the facilities to be constructed by Applicant is $37,100, which will be financed through short-term bank loans and retained earnings.

Applicant acquired a 20-year franchise from the City of Hustonville by successfully bidding at a public auction of the franchise on December 28, 1965. On March 4, 1966, the Public Service Commission of Kentucky issued a certificate of convenience and necessity to Applicant authorizing the construction and operation of the distribution system as proposed.

Respondent filed an answer to the application on April 8, 1966, stating that it does not oppose the issuance of an order directing it to serve Applicant as requested in the application.

Due notice of the filing of the application was published in the Federal Register on April 1, 1966 (31 F.R. 5272). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant is a public utility company in the Commonwealth of Kentucky and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish an additional connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 239 Mcf of natural gas per day to Applicant for resale and distribution in the City of Hustonville, and its environs, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E-7274

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 11, 1966)

By order issued April 29, 1966, 35 FPC 644, in the above-entitled matter, the Commission authorized Community Public Service Company (Applicant), to issue and sell at competitive bidding $5,000,000, principal amount of first Mortgage Bonds, due 1996, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on May 11, 1966, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Salomon Brothers & Hutzler, to purchase the proposed issuance of $5,000,000, principal amount of Bonds, for the price of 100.82% of principal amount, with an interest rate of 5⅞%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued April 29, 1966, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued April 29, 1966, in the above docket.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LUCY G. MOSES, DOCKET NO. CS66-6; HENRY AND LUCY MOSES FOUNDATION TRUST, DOCKET NO. CS66-7; BANKERS TRUST COMPANY AS TRUSTEE OF WILLIAM L. HERNSTADT 1950 TRUSTS, DOCKET NO. CS66-8; ESTATE OF WILLIAM L. HERNSTADT, DECEASED, DOCKET NO. CS66-9

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING SMALL PRODUCER CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, TERMINATING CERTIFICATES, CANCELLING FPC GAS RATE SCHEDULES, AND SEVERING AND TERMINATING PROCEEDINGS

(Issued May 11, 1966)

Each Applicant herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the Appendix hereto and in the applications.

Applicants have heretofore been authorized to sell natural gas from the Permian Basin area; and, therefore, the small producer certificates issued to them shall be effective on the date of this order. Applicants' presently effective certificates for sales from the Permian Basin area proposed to be continued under small producer certificates will be terminated and the related FPC gas rate schedules will be cancelled.

Applicants have heretofore filed increases in rate which were suspended in Docket Nos. RI62-116, RI62-117, RI62-118 and RI62-124 and have not been made effective. Said suspension proceedings, which are consolidated with the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61-1, *et al.*, 34 FPC 424, will be severed from said proceeding and terminated.

After due notice no notices of intervention have been received. A petition for leave to intervene was filed on February 3, 1966, by Hunt Oil Company and was denied by order issued March 4, 1966, 35 FPC 331. An order denying rehearing of said order was issued on April 26, 1966, 35 FPC 636. No further petitions for leave to intervene have been received.

At a hearing held on May 5, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications herein and in the Appendix hereto, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Applicants are independent producers of natural gas who are not affiliated with natural gas pipeline companies and whose total jurisdictional sales on a nationwide basis, together with sales of affiliated producers, were not in excess of 10,000,000 Mcf at 14.65 psia during the preceding calendar year.

(5) The sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and small producer certificates of public convenience and necessity therefor should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates heretofore issued to Applicants for sales of natural gas from the Permian Basin, which sales will be continued under the small producer certificates issued hereinafter, should be terminated, and the related FPC gas rate schedules should be cancelled.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the proceedings pending in Docket Nos. RI62-116, RI62-117, RI62-118 and RI62-124 should be severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61-1, *et al.*, and terminated.

The Commission orders:

(A) Small producer certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing the sale for resale and delivery of natural gas in interstate commerce by Applicants from the Permian Basin area of Texas and New Mexico, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the Appendix hereto and in the applications in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission, and particularly,

(a) The subject certificates shall be applicable only to all previous and all future "small producer sales," as defined in Section 157.40(a)(3) of the Regulations under the Natural Gas Act, from the Permian Basin area,

(b) Sales shall not be at rates in excess of those set forth in Sections 157.40(b)(1) of the Regulations under the Natural Gas Act, and

(c) Applicants shall file annual statements pursuant to Section 154.104 of the Regulations under the Natural Gas Act.

(C) The certificates granted in paragraph (A) above shall remain in effect for small producer sales until the Commission on its own motion or on application terminates said certificates because Applicants no longer qualify as small producers or fail to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificates. Upon such termination Applicants will be required to file separate certificate applications and individual rate schedules for future sales. To the extent compliance with the terms and conditions of this order is observed, the small producer certificates will still be effective as to those sales already included thereunder.

(D) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales subject to said certificates.

(E) The small producer certificates issued herein shall be effective on the date of this order.

(F) The certificates heretofore issued to Applicants for sales proposed to be continued under small producer certificates are terminated and the related FPC gas rate schedules are cancelled.

(G) The proceedings pending in Docket Nos. RI62-116, RI62-117, RI62-118 and RI62-124 are severed from the proceeding on the Order to Show Cause issued August 5, 1965, in Docket No. AR61-1, *et al.*, and terminated.

APPENDIX

Docket No. and Filing Date	Applicant	Cancelled FPC Gas Rate Schedule	Terminated Certificate Docket No.
CS66-6	Lucy G. Moses	[1] 1	G-20378
9-17-65		[1] 2	G-20378
CS66-7	Henry & Lucy Moses Foundation Trust	[2] [3] 1	G-20370
9-17-65		[2] [3] 2	G-20370
CS66-8	Bankers Trust Company, Trustee	[4] 1	G-20369
9-21-65		[4] 2	G-20369
CS66-9	Estate of William L. Hernstadt, Deceased	[5] [6] 1	G-20373
9-24-65		[5] [6] 2	G-20373

[1] Increase in rate is suspended in Docket No. RI62-117 and is not effective.
[2] Rate schedules are designated as H. L. Moses FPC Gas Rate Schedule Nos. 1 and 2.
[3] Increase in rate is suspended in Docket No. RI62-116 and is not effective.
[4] Increase in rate is suspended in Docket No. RI62-124 and is not effective.
[5] Rate schedules are designated as William L. Hernstadt FPC Gas Rate Schedule Nos. 1 and 2.
[6] Increase in rate is suspended in Docket No. RI62-118 and is not effective.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TOWN OF CORN, OKLAHOMA AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-126

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 12, 1966)

On October 22, 1965, the Town of Corn, Oklahoma (Applicant), filed an application in Docket No. CP66-126, as supplemented on March 14, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its transportation facilities with the proposed facilities of Applicant and to sell natural gas to Applicant, all as more fully set forth in the application, as supplemented, on file with the Commission.

Applicant proposes to construct and operate a municipally-owned natural gas distribution system within its borders, and environs adjacent thereto, and approximately 1.7 miles (9200 feet) of connecting lateral extending from the Town of Corn in a westerly direction to Respondent's transmission line, at which point Applicant requests Respondent provide a tap, regulating and metering facilities.

The estimated annual and peak day gas requirements for the first three years of the proposed operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	21,123	23,786	27,302
Peak day (Mcf)	361	416	481

The total estimated cost of Applicant's proposed distribution system and connecting lateral is $43,549, which will be defrayed from the sale of gas revenue bonds.

Respondent was duly notified by letter of the Commission dated October 27, 1965, of the filing of the application by the Town of Corn, Oklahoma, for an order directing it to provide the requested connection and service. The Respondent did not file an answer to the application within the time limits prescribed by the Commission's Regulations, and it is therefore assumed it has no objection to the rendering of the requested service.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on November 6, 1965 (30 F.R. 14056). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 481 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the Town of Corn, Oklahoma, and environs, within one year from the date of issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 481 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP66-241

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 12, 1966)

On January 27, 1966, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP66-241 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 3,300 horsepower of natural gas compression and 68 miles of various diameter natural gas pipeline, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate natural gas facilities as follows:

(A) Install approximately 1,100 additional horsepower at the Big Springs, Nebraska, Compressor Station;

(B) parallel 24 miles of 10-inch pipeline with 12-inch pipeline between Ogallala and Paxton, Nebraska;

(C) replace 10 miles of 8-inch and 2 miles of 10-inch pipeline with 16-inch pipeline between North Platte and Brady, Nebraska;

(D) install a new 1,100 horsepower compressor station at Riverdale, Nebraska;

(E) install a 1,100 horsepower addition to the Grand Island, Nebraska, Compressor Station;

(F) replace 24 miles of 6-inch pipeline with 8-inch pipeline between Riverdale and Litchfield, Nebraska;

(G) replace approximately 8 miles of 2-inch pipeline between Northport and Oshkosh, Nebraska, with 3-inch pipeline.

Applicant states that the increase of firm market demands of the towns presently connected to its system makes it necessary for Applicant to increase its transmission capacity to serve the additional growth. The capacity of the main transmission facilities will be increased by approximately 10,000 Mcf per day.

Additional sales to existing customers utilizing the facilities to be constructed will be made under existing filed FPC rate schedules, as those sales are subsequently authorized. No new authorizations for sales are sought in the instant filing.

The estimated total cost of construction of the facilities listed above is $1,590,700, which will be financed from current working capital and by interim bank loans if required.

Due notice of the filing of the application was published in the Federal Register on February 16, 1966 (31 F.R. 2801). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation with its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Kansas-Nebraska Natural Gas Company, Inc., authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MICHIGAN GAS AND ELECTRIC COMPANY, DOCKET NO. E-7222

ORDER DENYING MOTION TO OMIT INTERMEDIATE DECISION PROCEDURE

(Issued May 12, 1966)

Staff counsel on April 20, 1966, filed a motion under Section 1.30(c) of the Rules of Practice and Procedure to omit the intermediate decision procedure in this proceeding. On April 29, 1966, Michigan Gas and Electric Company (MG&E), filed an answer in opposition to staff's motion. For reasons set forth hereafter we deny staff's motion.

This proceeding was initiated by Commission order issued May 4, 1965, 33 FPC 954, instituting an investigation and hearing to determine the lawfulness of wholesale electric rates and charges of MG&E to the City of Dowagiac, Michigan and to the Village of Paw Paw, Michigan. The hearing convened on December 22, 1965, before a Commission Examiner and concluded on April 18, 1966. A three part briefing schedule has been fixed by the Examiner with final briefs to be filed on or before July 11, 1966.

Staff bases its motion primarily upon the fact that the intermediate decision procedure carries with it certain time limitations. However, staff fails to show, in the circumstances of this proceeding, that due and timely execution of the Commission's regulatory functions warrants our dispensing with the Examiner's initial decision.

We agree with staff's statement that this proceeding should be concluded with all prudent speed. We are confident that the Examiner also recognizes the desirability of expediting the decisional process. The briefing schedule as fixed by the Examiner is calculated to balance such time considerations with the demands of resolving the factual and legal issues presented in this proceeding.

Upon careful consideration of the arguments for and against the motion to omit the intermediate decision procedure, we find it in the public interest to deny staff's motion.

The Commission orders:

The motion to omit the intermediate decision procedure filed by staff is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SHENANDOAH GAS COMPANY, DOCKET NO. CP65-287

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 12, 1966)

On March 16, 1966, Shenandoah Gas Company (Petitioner) filed in Docket No. CP65-287 a petition to amend the order issued in said docket on June 29, 1965, 33 FPC 1300, by authorizing the construction and operation of additional natural gas facilities to deliver natural gas on an interruptible basis to a new industrial customer, Bauhan-Davis Lime Co., Inc. (Bauhan-Davis), as more fully set forth in the petition to amend.

In the order issued June 29, 1965, Petitioner was authorized, *inter alia*, to construct and operate approximately 1.8 miles of 2-inch and 3-inch pipeline lateral from Strasburg, Virginia, to the 26-inch transmission pipeline of Atlantic Seaboard Corporation (Atlantic) for service to Strasburg. Atlantic was directed to establish physical connection of its facilities with the facilities to be constructed by Petitioner and sell to Petitioner up to 97 Mcf of natural gas per day.

Petitioner now requests authorization to construct and operate 300 feet of 4-inch and 5,700 feet of 3-inch steel pipeline with appurtenant meter and regulator facilities. The pipeline will extend from the existing point of interconnection with Atlantic's facilities authorized June 29, 1965, to the Bauhan-Davis plant located in Shenandoah County, Virginia, in the vicinity of Strasburg.

Bauhan-Davis proposes to use the natural gas in producing lime from local deposits of limestone in the area. The process involves the calcination of lime rock for use primarily in the manufacture of steel and glass.

Petitioner estimates that the annual and daily requirements for natural gas to serve Bauhan-Davis on an interruptible basis during the first three years of operations will be 195,000 Mcf and 610 Mcf, respectively. The agreement between Petitioner and Bauhan-Davis calls for the delivery of a maximum of 6,250 therms per day on an interruptible basis.

The estimated cost of the facilities to be constructed is $32,700, which will be financed from open account advances made by Washington Gas Light Company, Petitioner's parent company.

On April 20, 1966, Atlantic filed an answer to the petition to amend stating that its system capacity and its Contract Demand with Petitioner are both sufficient to cover the contemplated service.

Due notice of the petition to amend was published in the Federal Register on March 31, 1966 (31 F.R. 5234). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issued in Docket No. CP65-287 on June 29, 1965, be amended as hereinafter ordered.

The Commission orders:

(A) The order issued in Docket No. CP65-287 on June 29, 1965, authorizing Petitioner, Shenandoah Gas Company, to construct and operate certain natural gas facilities is amended by authorizing the construction and operation of 300 feet of 4-inch and 5,700 feet of 3-inch steel pipeline lateral and the delivery of up to 6,250 therms per day of natural gas to Bauhan-Davis as described above and as more fully described in the petition to amend.

(B) Paragraph (D) of the order issued in this docket on June 29, 1965, is amended to read as follows: Atlantic Seaboard Corporation is directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver at such connection natural gas to Applicant for resale in the Strasburg area all as hereinbefore described and as more fully set forth in the application as amended in this proceeding.

(C) The authorization herein issued shall be without force and effect unless the fees, if any, prescribed by Sections 159.2(b) and 159.2(d) of the Commission's Regulations under the Natural Gas Act, established by the Commission's Order Nos. 317 and 317-A in Docket No. R-282, 35 FPC 30, 392, have been paid in accordance with the requirements thereof.

(D) The interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Petitioner for firm service to its customers.

(E) In all other respects the order issued in Docket No. CP65-287 on June 29, 1965, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP66-288

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 12, 1966)

On March 14, 1966, Transwestern Pipeline Company (Applicant) filed in Docket No. CP66-288 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas compressor facilities, as more fully set forth in the application.

Specifically, Applicant will construct and operate the following facilities:

(1) a 1,000 horsepower gas turbine compressor unit and appurtenant facilities at Applicant's existing Keystone Station No. 1 in Winkler County, Texas, and

(2) a 660 horsepower reciprocating compressor unit and appurtenant facilities on Applicant's existing Atoka pipeline lateral in Eddy County, New Mexico.

Applicant states that the volume of natural gas which it is required to take into its Keystone lateral has increased to the point where additional capacity is required on that lateral and that the additional 1,000 horsepower compressor is needed to enable it to meet its commitments.

The volume of natural gas which Applicant is required to take from wells connected to its Atoka lateral has also increased in sufficient quantities to require additional capacity on that lateral. The proximity of the Atoka Field to the junction of Applicant's West Texas and Panhandle systems makes additional capacity on the Atoka lateral desirable for the purpose of furnishing greater operating flexibility to meet peak demand.

The total estimated cost of the proposed facilities is $428,000, which will be financed from internally generated funds.

Due notice of the filing of the application was published in the Federal Register on March 26, 1966 (31 F.R. 5025). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transwestern Pipeline Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by October 1, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66–291

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1966)

On March 16, 1966, El Paso Natural Gas Company (Applicant) filed an application in Docket No. CP66–291 pursuant to Section 7(c) of the Natural Gas

Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, the acquisition from Southern Union Gas Company (Southern Union) and operation of a segment of pipeline and the sale and delivery of natural gas to Southern Union, all as more fully set forth in the application.

Applicant and Southern Union have formulated a project to provide natural gas service for consumers situated in the community of Truth or Consequences, Sierra County, New Mexico, and environs, including the community of Williamsburg situated adjacent to Truth or Consequences, and to consumers situated in areas of Luna, Sierra and Dona Ana Counties, New Mexico, along the route of the proposed facilities of Applicant and Southern Union described in the application. These communities are proposed to be served by Southern Union from volumes of natural gas to be sold to it by Applicant.

Applicant proposes to construct and operate a measuring and regulating station at a point where Southern Union's proposed 4½-inch O.D. pipeline will interconnect with Applicant's California mainline system. Southern Union will construct and operate approximately 70.1 miles of the 4½-inch line, of which Applicant proposes to acquire approximately 11.2 miles extending from the measuring and regulating station.

The estimated annual and peak day natural gas requirements of Southern Union are 355,300 Mcf and 2,740 Mcf, respectively. The service is proposed to be rendered pursuant to Applicant's Rate Schedules A-2, B-3 and D-3, FPC Gas Tariff, Original Volume No. 1.

The total cost to Applicant for this proposed project, including the purchase of a portion of the lateral pipeline to be installed by Southern Union, will be $120,000.00 and is to be financed from working funds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed acquisition of facilities from Southern Union, the construction and operation of facilities, and sale of natural gas in interstate commerce, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed acquisition of facilities, construction and operation of facilities, and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, the acquisition and operation of facilities and sale and delivery of natural gas to Southern Union, all as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-314

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1966)

On April 4, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP66-314 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities required to deliver natural gas on an interruptible basis to Paymaster Oil Company, a division of Anderson, Clayton & Co., Incorporated (Paymaster), all as more fully set forth in the application.

Applicant proposes to construct and operate the following natural gas facilities in Warren County, Mississippi.

(1) A line tap located at approximately M.P. 1.735 on Applicant's Vicksburg Harbor Project lateral pipeline in Warren County, Mississippi;

(2) 520 feet of 3½-inch pipeline from the said tap to Paymaster's plant; and

(3) A measuring station at the terminus of the said 3½-inch pipeline.

Paymaster's estimated natural gas requirements to be served through the proposed facilities are 1,500 Mcf per day. The service will be on an interruptible basis and rendered pursuant to a contract between Applicant and Paymaster dated February 25, 1966. Paymaster will utilize the gas in its plant, which is now under construction, for the processing of soybeans.

The estimated cost of the facilities to be constructed by applicant is $23,690, which will be defrayed from funds on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Southern Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce for the delivery of up to 1500 Mcf per day on an interruptible basis, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

(D) The certificate issued by paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65-398

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1966)

On June 11, 1965, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP65-398 an application and a supplement thereto on September 20, 1965, pursuant to Sections 7(b)[1] and 7(c) of the Natural Gas Act for permission and approval to abandon the operation of certain natural gas facilities at Applicant's Haughton, Louisiana, compressor station and to remove from the Haughton Station a 1320 Hp compressor unit to a proposed site in the Midland Field in Muhlenberg County, Kentucky, and for a certificate of public convenience and necessity authorizing the installation and operation of the 1320 Hp compressor unit, together with 3500 feet of 12-inch pipeline and 3200 feet of 10-inch pipeline, to be located in the Midland Field in Muhlenberg County, Kentucky, all as more fully set forth in the application and supplement thereto.

The compressor unit proposed to be relocated in the Midland Field is no longer needed in the Haughton Compressor Station in Bossier Parish, Louisiana, due to a decline in production from the nearby Carthage Field. Additional compression is required in the Midland Field to enable Applicant to meet its present and future purchase obligations related to the Midland Field reserves.

The estimated cost of the Applicant's proposals is $473,110 and will be defrayed from funds on hand.

After due notice of the application published in the Federal Register on June 26, 1965 (30 F.R. 8245) Charles Baker and W. E. Williams (B&W) independent producers selling natural gas to Applicant in the Midland Field, filed on July 15, 1965, a petition to intervene. The petition to intervene was withdrawn on February 17, 1966. No other petition to intervene, or notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G-855 (7 FPC 213).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

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[1] Proposal to remove and relocate compressor unit treated as a request for permission to abandon operation in present location.

(4) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Texas Gas Transmission Corporation, of the facilities hereinbefore described, as more fully described in the application, supplement, and exhibits filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Texas Gas Transmission Corporation, authorizing the construction and operation of facilities, and the transportation of natural gas as hereinbefore described, all as more fully described in the application, supplement and exhibits upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) within ten days of such abandonment.

(E) The facilities authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE COLORADO RIVER WATER CONSERVATION DISTRICT, PROJECT NO. 2511

ORDER ISSUING PRELIMINARY PERMIT

(Issued May 16, 1966)

Application was filed on March 31, 1965 by The Colorado River Water Conservation District (Applicant) of Glenwood Springs, Colorado, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project

No. 2511, to be known as Red Cliff project, to be located on Eagle River and its tributaries, Homestake Creek, Peterson Creek and Fall Creek, in Eagle County, Colorado, near the towns of Red Cliff and Gilman, and affecting lands of the United States within the White River National Forest.

The proposed project, which is to serve as a combination water storage for industrial and municipal needs and hydroelectric development, would consist principally of a dam and reservoir and regulating reservoir, a canal, conduits and powerhouse with a proposed installed capacity therein of 16,000 kw.

The Secretary of the Army and the Chief of Engineers have advised that they have no objection to the issuance of a permit.

The U.S. Forest Service has advised that it has no objection to the issuance of a permit subject to the terms and conditions set forth in attached Form P–1, and to a special condition in the interests of alleviating damage to and achieving maximum utilization of the National Forest resources affected, as set forth in Article 11.

The Department of the Interior has recommended that any preliminary permit for the project be made subject to the attached Form P–1 terms and conditions and to special conditions in the Department's interests, as set forth in Articles 12, 13 and 14.

The Department of Health, Education, and Welfare has advised that while the project is not expected to create or intensify any water supply or water pollution problems in the area, vector prevention measures should be incorporated into the design, construction, and operation of the project, as provided for in Article 10.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

By our order issued November 1, 1965, 34 FPC 1211, we denied petitions to intervene in this proceeding filed by the City of Colorado Springs, Colorado, The City of Aurora, Colorado, and The New Jersey Zinc Company, all alleging principally that the proposed project might interfere with or affect claimed water rights of Petitioners. Our order stated that, as mentioned above, a preliminary permit does not authorize construction, and such a permit would not affect any vested water rights Petitioners may have.

Applicant requests a preliminary permit for 36 months. It appears appropriate, however, that the period of the permit should be 24 months as herein provided.

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of Colorado.

(2) Public notice of the filing of the application has been given. Except for the aforesaid petitions to intervene, no protests or petitions to intervene have been received. No conflicting application is before the Commission. The project would not affect a Government dam.

The Commission orders:

(A) This preliminary permit is hereby issued to The Colorado River Water Conservation District (Permittee) of Glenwood Springs, Colorado, for a period of 24 months, effective as of May 1, 1966, for the sole purpose of maintaining priority of application for license for Project No. 2511, to be located on Eagle River and its tributaries, Homestake Creek, Peterson Creek and Fall Creek, near the towns of Red Cliff and Gilman, and affecting lands of the United States within White River National Forest, subject to the terms and conditions of Sections 4(f) and 5 of the Act which are incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project, as tentatively proposed in the application, would consist of: (1) Iron Mountain earth and rockfill dam (about 1,000 feet long and 190 feet high) located on Homestake Creek; (2) Iron Mountain Reservoir, at elevation 8,880, created by the dam on Homestake Creek, about 750 acres in area with a capacity of 53,000 acre-feet; (3) Pando Feeder Canal some 9,000 feet long to convey water from a headgate on the Eagle River to the above reservoir; (4) Gilman Power Conduit 6 feet in diameter 19,000 feet long; (5) a penstock 13,500 feet long; (6) a powerplant with a proposed installed capacity of 16,000 kw; (7) feeder conduits to convey water to the power conduit from intake structures on Peterson Creek and Fall Creek; (8) Edwards (regulating) Reservoir with a capacity of about 3,000 acre-feet; and (9) appurtenant facilities.

(C) This preliminary permit is also subject to the terms and conditions set forth in Form P-1 entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303-1305) which terms and conditions, designated and described as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the Permit, to the Regional Engineer, Federal Power Commission, Fort Worth, Texas, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, consult with the appropriate State and local agencies to determine any necessary mosquito and insect control measures.

Article 11. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Denver Federal Center, Denver, Colorado, or his representative, as to reasonable requirements relative to operations, field surveys and explorations, and shall abide by such requirements: and shall cooperate with the United States Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources insofar as affected by the proposed project.

Article 12. The Permittee shall, during the period of project planning, cooperate with the U.S. Fish and Wildlife Service and the Colorado Department of Game, Fish and Parks for the purpose of planning and designing adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of or damage to those resources, and (3) to develop and improve those resources where practicable.

Article 13. The Permittee shall cooperate with the Bureau of Outdoor Recreation, the U.S. Forest Service, and the Colorado Department of Game, Fish, and Parks in developing a recreational use plan providing for full development of the project's recreational potential, consistent with regional needs for recreation opportunity, necessary limitations in the interests of public health and safety, and the necessity to operate the project for its primary purposes of water storage and hydroelectric development. This recreational use plan shall be submitted as Exhibit R in the application for license and shall meet all requirements of Federal Power Commission Order No. 292 of January 8, 1965, 33 FPC 32.

Article 14. The Permittee shall consult with the Regional Director, National Park Service, Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87501, concerning the cost of archeological survey and salvage operations.

Article 15. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

E. L. CORD, PROJECT NO. 1746

ORDER ISSUING NEW LICENSE (MINOR)

(Issued May 16, 1966)

Application was filed on August 26, 1965, and supplemented on March 11, 1966, by E. L. Cord (Applicant) of Reno, Nevada, for a new license under Section 4(e) of the Federal Power Act (Act) for a period of 25 years for constructed minor Project No. 1746, located on Leidy or Robinson Creek, a tributary to Fish Lake Valley Sink, in Esmeralda County, Nevada, and affecting lands of the United States within the Inyo National Forest and other lands of the United States.

The present license for the project, issued to Applicant on February 7, 1962, 27 FPC 316, will expire on September 30, 1966.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Inyo National Forest, has advised that the project will not interfere or be inconsistent with the purposes for which the National Forest was created or acquired, provided that Articles 7 and 8 of attached Form L–7, amended in the manner set forth in Articles 15 and 16, are included in any new license for the project.

The Department of the Interior has advised that the project has no significant effect on fish and wildlife and no conditions in addition to those set forth in attached Form L–7 are considered necessary for inclusion in any license for the project in the interest of fish and wildlife resources.

The Department of Health, Education, and Welfare has advised that the project does not have any significant adverse effects on water supply or water quality, and none is anticipated.

In the interest of assuring full public access to and utilization of project lands and waters for navigation and recreational purposes, we are including herein special Article 17.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, et al., Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) Applicant is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) The project affects lands of the United States.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The issuance of a new license for the project will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands, or with the purposes for which the Inyo National Forest was created or acquired.

(7) The installed capacity of the project is 300 horsepower, and the amount of annual charges to be paid under the new license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, and for recompensing the United States for the use, occupancy, and enjoyment of its lands (44.43 acres) is reasonable as hereinafter fixed and specified.

(8) The transmission line mentioned in Paragraph (B) below is part of the project within the meaning of Section 3(11) of the Act.

(9) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d), 10(f); 11; 12: 14; except insofar as the power of condemnation is reserved; 15, 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(10) The following described exhibit on file with the Commission and included in the application for new license by reference thereto, and hereto-

fore approved by the Commission as a part of the license expiring on September 30, 1966, should be reapproved as part of this new license:

Exhibit A Sheet 1 of 1: (FPC No. 1746-7) A map and plan in one sheet entitled "Existing Hydroelectric Plant for E. L. Cord at Dyer, Esmeralda County, Nevada. Circle L Ranch Pipeline Plan & Profile", drawn by Nelson Engineering—Civil Engineer, Reno, Nevada, November 30, 1960.

The Commission orders:

(A) This new license is hereby issued to E. L. Cord (Licensee) of Reno, Nevada, under Sections 4(e) and 10(i) of the Federal Power Act, for a period of 25 years, effective as of October 1, 1966, for the continued operation and maintenance of constructed minor Project No. 1746, located on Leidy or Robinson Creek, in Esmeralda County, Nevada, and affecting lands of the United States within the Inyo National Forest and other lands of the United States, subject to the terms and conditions of the Act, insofar as not expressly waived herein, which Act is incorporated herein as a part of this new license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 1746 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) a reinforced concrete dam 71 feet long and approximately 9 feet high; two 12-inch pipe conduits 97 feet long to a small concrete settling basin; a 12-inch pipe conduit about 1,525 feet long joining the original pipe line; a 10-inch pipe conduit about 19,484 feet long; a cement-block powerhouse containing two 150 horsepower water wheels connected to two 100 kw generators; a 5,700 foot long transmission line; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance of the project.

(C) This new license is also subject to the terms and conditions set forth in Form L-7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14 (except Articles 7 and 8) are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 15. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee, with the provisions that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the Licensee and in coordination with his project construction schedules. Such sale or disposal to others will not relieve the licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 16. The licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 17. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 18. The Licensee shall pay to the United States the following annual charges effective as of October 1, 1966:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $15.00; and

(ii) for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of the transmission line right-of-way, $53.32 per annum.

(D) The exhibit designated and described in finding (10) above is hereby reapproved as part of this new license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this new license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this new license. In acknowledgment of the acceptance of this new license, it shall be signed by the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-393

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE OUT OF TIME AND PETITION TO INTERVENE

(Issued May 16, 1966)

On April 25, 1966, the Department of Health, Education, and Welfare (Department) filed a motion for leave to intervene out of time accompanied by a petition for intervention in the above-named case. On May 2, 1966, our staff filed an answer in opposition to such motion, and on May 5, 1966, Florida

Gas Transmission Company (Florida Gas) submitted an answer to the petition and motion.

The Department alleges that it has a statutory duty with respect to the causes, effects, extent and prevention and control of air pollution, that the public interest as represented by it is not adequately presented by existing parties in this proceeding[1] and therefore that its intervention is required at this time. It alleges that the interests of the Department and the public interests would be served by intervention to insure that its views on the air pollution issue in this proceeding can be adequately presented. Florida Gas states that it has been authorized to state that the Department does not desire to reopen the record to present testimony or cross-examine witnesses in view of the present posture of the proceeding. The record in the case was closed three days prior to the filing of the motion and petition to intervene and the briefing schedule has been fixed.

Staff objects to the intervention on the ground that it was filed much too late and that there is no extraordinary reason or good cause alleged to excuse such late filing, as required by our rules of practice and procedure. Staff points out that the Department knew of the air pollution issue long before it filed its motion and petition and, in fact, had been formally notified of the air pollution question in the case by a February 18, 1966 letter from our General Counsel.

In his letter to the General Counsel of the Department, our General Counsel called attention to the fact that testimony had been presented by Florida Gas Transmission Corporation and the Florida State Board of Health on the question of air pollution and stated "Should you desire to express your views on this matter in this case, I feel it would be advisable that you formally do so at an early stage of the proceeding." Although the Department, in filing its petition at a time after the record had just been closed, is late, the Department did state specifically that it wanted only those rights available to existing parties "at the present posture of this proceeding." Consequently, it will be unnecessary to reopen this record to obtain an expression of the Department's views based upon the record which has already been made.

While no excuse or reason was submitted by the Department for its late filing, we recognize that the issue of air pollution is a comparatively novel one in proceedings before us and would welcome the views of the governmental agency specifically concerned with the problem on a national basis. We would anticipate that future filings will be timely made. Since, in this proceeding there apparently would be no delay suffered by the presence of the Department as an intervener solely for the purpose of presenting its position in briefs or other post-hearing proceedings as may arise, we shall permit its limited intervention on the air pollution question at this time.

The Commission orders:

(A) The motion of the Department of Health, Education, and Welfare for leave to intervene out of time is granted.

(B) The petition of the Department of Health, Education, and Welfare for intervention is granted, limited, however to those rights and interests specifically set forth in its petition for intervention and to the timely filing of briefs and exceptions as appropriate, participation in oral argument, if any, before the Commission, and such further proceedings as may be had before the Commission.

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[1] The Florida State Board of Health is an intervener.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MIDHURST OIL CORPORATION, DOCKET NO. RI66-334

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued May 16, 1966)

Midhurst Oil Corporation (Midhurst) on April 22, 1966, filed a motion for reconsideration[1] of the order issued April 8, 1966, in Docket No. RI66-334 suspending for one day proposed increased rates of 14.5¢ per Mcf, designated as Supplement Nos. 4 and 13 to Midhurst's FPC Gas Rate Schedule Nos. 5 and 2, respectively, for sales of natural gas to El Paso Natural Gas Company from the Permian Basin area. Midhurst was also required by that order to submit quality statements for each rate schedule in the form prescribed by Opinion Nos. 468 and 468-A.

In support of its motion Midhurst claims that it is a "small producer" as classified in Opinion Nos. 468 and 468-A, 34 FPC 159, 1068 and therefore the proposed increased rates should not have been suspended and it should not be required to file quality statements.

Midhurst's proposed rates are equal to the applicable base rate ceiling prescribed in the Permian opinion. While those producers which filed applications for small producer certificates in accordance with Order No. 308 issued October 29, 1965 in Docket No. R-279, 34 FPC 1202 were relieved of the requirement of filing quality statements by the Permian opinion,[2] such relief was not accorded to any producer which did not apply for small producer authorization even though that producer might otherwise qualify as a small producer. Since Midhurst has not sought a small producer certificate it is not entitled to the relief authorized thereunder. Moreover, apart from the requirement in the April 8 order that quality statements be filed for the subject sales, Midhurst was also required to file such quality statements by Opinion No. 468, as subsequently amended, on or before March 21, 1966. In view of the foregoing, we shall deny Midhurst's motion for reconsideration.

The Commission orders:

For the reasons set forth above, Midhurst's motion for reconsideration filed on April 22, 1966, in Docket No. RI66-334 is denied.

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[1] Midhurst termed the document a motion for rehearing or reconsideration. An application for rehearing of an interlocutory order such as here involved may not properly be filed [Section 1.30(e) of the Rules of Practice and Procedure. (18 CFR 1.30(e))]. The document has been considered as a motion for reconsideration pursuant to Section 1.12 of the Rules of Practice and Procedure.

[2] Under the Permian Opinion and order No. 308, those producers which receive small producer certificate authorization are entitled to the applicable area base ceiling rate or contract rate, whichever is lower no matter what type of gas is sold under the contract. Such producers are therefore not required to make downward adjustments for the sale of less than pipeline quality gas.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-310

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1966)

On March 30, 1966, Transcontinental Gas Pipe Line Corporation, (Applicant), filed in Docket No. CP66-310 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a river crossing, all as more fully set forth in the application.

Applicant proposes to construct and operate .85 mile of dual 18-inch pipeline, comprising an underwater crossing of the Atchafalaya River, on Applicant's main pipeline between its compressor stations No. 50 and No. 60 in St. Landry and Pointe Coupee Parishes, Louisiana. The Atchafalaya River is very erratic and subject to severe flooding and continual changes in course. The situation, has caused Applicant's concern over its existing crossings; an aerial bridge-type crossing composed of two 30-inch pipelines, and underwater crossing composed of two 18-inch pipelines. The new underwater crossing will provide added assurance of ability to render service.

The estimated total cost of construction of the proposed river crossing is $1,431,000, which will be financed from cash on hand or from short term bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G-704 (7 FPC 24).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs

(a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HUNT OIL COMPANY, DOCKET NO. RI66–127 AND HUNT OIL COMPANY (OPERATOR), ET AL., DOCKET NO. RI66–128

ORDER ACCEPTING DECREASED RATE FILINGS

(Issued May 18, 1966)

On April 19, 1966, Hunt Oil Company and Hunt Oil Company (Operator), *et al.*, (both referred to herein as Hunt) each submitted a proposed tax reimbursement decrease, totaling $1,300 annually. The tax reimbursement reductions are due to the buyer, United Gas Pipe Line Company, exercising its option to reduce the amount of Louisiana Severance Tax reimbursement due such seller under their respective Gas Purchase Contracts. Hunt's decreased rate filings are set forth in Appendix "A" hereof.

The proceeding in Docket No. RI66–127 involves a rate increase filed by Hunt Oil Company on November 1, 1965, proposing to increase its rate to 22.25¢ per Mcf at 14.65 psia for sales of natural gas to United Gas Pipe Line Company in the South Mermentau Area, Acadia Parish, Louisiana (South Louisiana). The proposed incerase, designated as Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 42, was suspended by the Commission's order issued October 22, 1965, until April 1, 1966, and was later permitted to become effective subject to refund as of April 1, 1966.

The proceeding in Docket No. RI66–128 involves a rate increase filed by Hunt Oil Company (Operator), *et al.*, on November 1, 1965, proposing to increase their rate to 22.375¢ per Mcf at 14.65 psia, for sales of natural gas to United Gas Pipe Line Company in the Castor Creek Area, Allen Parish, Louisiana (South Louisiana). The proposed increase, designated as Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 41, was suspended by the Commission's order issued October 22, 1965, until April 1, 1966, and was later permitted to become effective subject to refund as of April 1, 1966.

Hunt request that their proposed decreased rate filings be permitted to become effective as of April 1, 1966, the date the increased rates in Docket Nos. RI66–127 and RI66–128, including tax reimbursement, were made effective subject to refund. Since the proposed tax changes do not affect the base rate which exceeds the ceiling level for increased rates in South Louisiana as set forth in the Commission's Statement of General Policy No. 61–1, as amended, we believe that it would be in the public interest to waive the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act and accept for filing Hunt's proposed tax decreases effective as of April 1, 1966, the proposed effective date, subject to refund in the existing rate proceedings in Docket Nos. RI66–127 and RI66–128.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept for filing the proposed tax reimbursement rate decrease filings, designated as Supplement No. 6 to Hunt Oil Company's FPC Gas Rate Schedule No. 42, and Supplement No. 6 to Hunt Oil Company (Operator), *et al.'s* FPC Gas Rate Schedule No. 41, subject to the existing rate suspension proceedings in Docket Nos. RI66–127 and RI66–128, respectively, and refund obligations related thereto.

The Commission orders:

The tax reimbursement decreases, designated as Supplement No. 6 to Hunt Oil Company's FPC Gas Rate Schedule No. 42, and Supplement No. 6 to Hunt Oil Company (Operator), *et al.'s* FPC Gas Rate Schedule No. 41, are accepted for filing, effective as of April 1, 1966, subject to the existing rate suspension proceedings in Docket Nos. RI66–127 and RI66–128, respectively, and refund obligations related thereto.

APPENDIX A

Docket No.	Respondent	Rate Sched. No.	Supp. No.	Purchaser and Producing Area	Amount of Annual Decrease	Rate Filing Tendered	Effective Date	¢ per Mcf		Rate in Effect Subject To Refund in Docket Nos.
								Rate in Effect	Proposed Decreased Rate	
RI66-127	Hunt Oil Company, 1401 Elm Street, Dallas, Texas 75202.	42	[1] 6	United Gas Pipe Line Company (South Mermentau Area, Acadia Parish, Louisiana) (South Louisiana).	$1,050	4-19-66	[2] 4-1-66	[6] 22.25	[3][4][5] 22.00	RI66-127
RI66-128	Hunt Oil Company (Operator), *et al.*	41	[1] 6	United Gas Pipe Line Company (Castor Creek Area, Allen Parish, Louisiana) (South Louisiana).	250	4-19-66	[2] 4-1-66	[7] 22.375	[3][4][6] 22.25	RI66-128

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[1] Includes a letter dated April 6, 1966, which provides for the reduction in tax reimbursement.

[2] The stated effective date is the effective date proposed by Respondent.

[3] Tax reimbursement rate decrease.

[4] Pressure base is 14.65 psia.

[5] Includes 1.50¢ per Mcf tax reimbursement.

[6] Includes 1.75¢ per Mcf tax reimbursement.

[7] Includes 1.875¢ per Mcf tax reimbursement.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-206

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 19, 1966)

On December 23, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-206 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to sell and deliver increased quantities of natural gas to certain existing customers and to initiate firm natural gas service, through Applicant's Peoples Natural Gas Division, to a new plant of the U.S. Steel Corporation (U.S. Steel) now under construction near Mountain Iron, Minnesota, all as more fully set forth in the application in this proceeding.

Applicant proposes to increase its system capacity by 55,024 Mcf of gas per day. Of this amount 41.674 Mcf will be used to meet the increased contract demand requirements of its existing customers and 13,350 Mcf per day will be used to supply U.S. Steel. Applicant and U.S. Steel have entered into a contract, dated September 20, 1965, providing for maximum daily deliveries by Applicant of 13.350 Mcf. U.S. Steel, however, may exercise its right to have the daily delivery volume reduced to a minimum of 10,000 Mcf after it has determined the new plant's capacity. In the event U.S. Steel exercises its right to reduce the daily volume, Applicant shall be required to file a petition to amend the subject order to authorize any lower contract demand.

Applicant also requests approval of reductions in effective contract demands of certain communities presently served by three of its utility customers, Iowa Electric Light & Power Co., Western Power & Gas Company, Inc. and Applicant's Peoples Division. These reductions to individual communities do not constitute a decrease in the overall effective contract demands of the three utility customers involved.

Specifically, Applicant proposes to construct and operate the following facilities: (1) 8.5 miles of 30-inch pipeline north of Oakland, Iowa; (2) 10.1 miles of 30-inch pipeline northeast of Palmyra, Nebraska; (3) 10.6 miles of 36-inch pipeline north of Beatrice, Nebraska; (4) 8 miles of 30-inch pipeline north of Bushton, Kansas; (5) 10 miles of 36-inch pipeline north of Macksville, Kansas; (6) 1.9 miles of 6-inch pipeline near Harlan, Iowa; (7) 2.3 miles of 4-inch pipeline near Northfield, Minnesota; (8) 4.6 miles of 10-inch pipeline together with two 10-inch orifice meter runs near Mountain Iron, Minnesota, for service to the new U.S. Steel plant, and (9) certain piping modifications, additions to existing control system for North Branch, and compressor facilities, totaling approximately 39,365 horsepower, to be located at various points in Minnesota, Iowa, Kansas, Oklahoma and Texas.

Applicant states that it has been previously authorized to construct and operate certain facilities which are scheduled for construction during 1966. Additionally, at Docket No. CP65-196, Applicant has pending before the Commission authorization for other facilities which, if authorized, would be constructed in 1966. In viewing the 1966 construction program as a single larger increment in system capacity instead of a series of small individual increases, Applicant states that economies can be realized by taking advantage of large units of horsepower and larger diameter loops. By Commission order issued

February 21, 1966, 35 FPC 238, in Docket No. CP64–255 (Phase I), Applicant has already been authorized to revise certain 1966 construction, theretofore authorized in that docket, to reflect changes in construction necessary to realize such above-described economies. Accordingly, to conform any authorization which may be granted in Docket No. CP65–196 with the authorization granted hereinafter, Applicant should also file a petition to amend any order which may be issued authorizing facilities in Docket No. CP65–196 to reflect changes, if any, in the facilities which may be authorized by such order.

The total estimated cost of Applicant's proposed facilities is $16,996,700, which cost will be financed from the sale of sinking fund debentures and from internal sources such as reserve accruals, retained earnings and cash-on-hand.

Several petitions to intervene have been filed herein. None of said petitions requests formal hearing in this proceeding or objects to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and/or sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and/or sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and *(e)* of Section 157.20 of such Regulations.

(6) Applicant should file a petition to amend the subject order to authorize any lower contract demand for U.S. Steel for use at the latter's proposed plant near Mountain Iron, Minnesota, should the precise contract demand to be subsequently determined be lower than the maximum daily volume of 13,350 Mcf hereinafter authorized to be transported and delivered to U.S. Steel.

(7) To conform any authorization which may be granted in Docket No. CP65–196 with the authorization granted hereinafter, Applicant should file a

petition to amend any order which may be issued authorizing facilities in Docket No. CP65–196 to reflect changes, if any, in the facilities which may be authorized by such order.

(8) This certificate should not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and/or transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sales and/or transportation and deliveries of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Applicant shall file a petition to amend the subject order to authorize any lower contract demand for U.S. Steel for use at the latter's proposed plant near Mountain Iron, Minnesota, should the precise contract demand to be subsequently determined be lower than the maximum daily volume of 13,350 Mcf authorized by paragraph (A) above to be transported and delivered to U.S. Steel.

(E) To conform any authorization which may be granted in Docket No. CP65–196 with the authorization granted in paragraph (A) above, Applicant shall file a petition to amend any order which may be issued authorizing facilities in Docket No. CP65–196 to reflect changes, if any, in the facilities which may be authorized by such order.

(F) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

[LETTER-ORDER ISSUING TEMPORARY CERTIFICATE]

May 19, 1966*

Docket No. CI66–410, Sinclair Oil & Gas Company (Operator), et al.

SINCLAIR OIL & GAS COMPANY
Sinclair Oil Building
Tulsa, Oklahoma 74102

Attention: P. T. Davis, Manager
FPC Activity

Gentlemen:

This is with reference to your request filed March 18, 1966, in Docket No. CI66–410, for a temporary certificate to sell residue gas derived from gas-well

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*Amended by letter-order issued June 17, 1966, 35 FPC 1046; Rehearing denied August 17, 1966, 36 FPC 458. Affirmed, *sub nom. Brooks Gas Corp.* v. *F.P.C.*, 383 F.2d 503 (CADC–1967).

gas to Northern Natural Gas Company from the Eldorado Plant, Schleicher County, Texas at a proposed rate of 16.5¢ per Mcf at 14.65 psia.

According to the application, the proposed sale may not meet all of the requirements set forth in the Commission's Opinion No. 468, 34 FPC 159, as modified. Accordingly, a temporary certificate is hereby issued to Sinclair Oil & Gas Company (Operator), *et al.* to sell natural gas as proposed in application for certificate, Docket No. CI66–410, from fields, other than the Velrex Eldorado field, located in Schleicher, Menard, Concho, Kimble, Tom Green, Sutton and Irion Counties, Texas.

(1) The initial rate shall be that provided in the rate schedule accompanying the certificate application or the applicable base area rate (16.5¢ per Mcf at 14.65 psia) as adjusted for quality pursuant to ordering paragraph (B) of the Commission's Opinion No. 468, as modified, whichever is lower.

(2) No increase in rate may be filed prior to January 1, 1968, except in compliance with a specific order of the Commission, for a rate in excess of the applicable area rate as determined pursuant to the Commission's Opinion No. 468, as modified, or pursuant to later order of the Commission.

(3) The filing, within 90 days from the date of initial delivery, of a Rate Schedule-Quality Statement as specified by ordering paragraph (F) of the Commission's Opinion No. 468, as modified, reflecting the rate determined in (1) above.

(4) If the quality of the gas delivered hereunder at any time deviates from the quality standards set forth in ordering paragraph (B) of Opinion No. 468–A, 34 FPC 1068, so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act; *provided, however*, that adjustments reflecting changes in Btu content shall be computed by the applicable formula and charged without the filing of a notice of change in rate.

(5) In the event any amounts are collected in excess of the rate finally determined in (1) above, your company shall refund to Northern, from the date of initial delivery, with interest of 7 percent per annum, all amounts collected in excess of such finally determined rate.

(6) This temporary certificate, with conditions attached thereto, shall not be construed to authorize Sinclair Oil & Gas Company (Operator), *et al.* to sell natural gas produced in the Velrex Eldorado field, Schleicher County, Texas, and shall be accepted as issued within 30 days herefrom by written acceptance by a responsible official of the company (original and three copies). If reconsideration of the temporary certificate is sought, service hereunder shall not be started. If service is commenced under this temporary certificate, the conditions attached shall be effective and the service may not be discontinued without permission of the Commission issued pursuant to the provisions of the Natural Gas Act.

Your related proposed rate schedule will be considered accepted for filing upon compliance with the above conditions to be effective on the date of initial delivery subject to the provisions of Sections 154.94(c) and 154.101 of the Commission's Regulations under the Natural Gas Act.

The related proposed rate schedule has been designated as follows:

Description	*Designation*
Contract 10–29–65	Sinclair Oil & Gas Company (Operator), et al. FPC Gas Rate Schedule No. 348

Please advise the Commission of the date of commencement of deliveries under such rate schedule making reference in your communication to the above designation.

Issuance of this temporary certificate and the acceptance of the above rate schedule are without prejudice to such final disposition of the application for certificate as the record may require. If service is not commenced within 90 days from the date of this temporary certificate, then such temporary certificate shall be void and of no effect.

By direction of the Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HUNT OIL COMPANY, DOCKET NO. RI66-127

ORDER ACCEPTING DECREASED RATE FILING

(Issued May 20, 1966)

On April 28, 1966, Hunt Oil Company (Hunt) filed a letter correcting a previously filed rate increase which was made effective subject to refund in Docket No. RI66-127. Hunt's letter, construed as a notice of change, deletes that part of the prior rate increase relating to tax reimbursement which Hunt now states it is not entitled to under the contract terms. The decreased rate filing is set forth in Appendix "A" hereof.

The proceeding in Docket No. RI66-127 involves a rate increase filed by Hunt on October 1, 1965, proposing to increase its rate to 14.6958¢ per Mcf at 14.65 psia for sales of gas to Tennessee Gas Transmission Company from the Bethany Field, Panola County, Texas (Railroad District No. 6). The proposed increase, designated as Supplement No. 7 to Hunt's FPC Gas Rate Schedule No. 26, was suspended by the Commission's order issued on October 22, 1965, until April 1, 1966, and was later permitted to become effective subject to refund on April 1, 1966.

Hunt requests an effective date of April 1, 1966, for the proposed rate decrease to correspond to the date the prior rate increase of 14.6958¢, plus tax reimbursement, became effective subject to refund in Docket No. RI66-127. Since the proposed corrected rate filing is due to the elimination of the tax reimbursement, we believe that it would be in the public interest to waive the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act and accept for filing Hunt's proposed tax decrease effective as of April 1, 1966, subject to refund in the existing rate proceeding in Docket No. RI66-127.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept for filing the proposed tax reimbursement rate decrease filing designated as Supplement No. 1 to Supplement No. 7 to Hunt's FPC Gas Rate Schedule No. 26, effective as of April 1, 1966, subject to the existing rate suspension proceeding in Docket No. RI66-127 and refund obligation related thereto.

The Commission orders:

The tax reimbursement decrease, designated as Supplement No. 1 to Supplement No. 7 to Hunt's FPC Gas Rate Schedule No. 26, is accepted for filing effective as of April 1, 1966, subject to the existing rate suspension proceeding in Docket No. RI66-127 and refund obligation related thereto.

APPENDIX A

Docket No.	Respondent	Rate Sched. No.	Supp. No.	Purchaser and Producing Area	Amount of Annual Decrease	Rate Filing Tendered	Effective Date	¢ per Mcf		Rate in Effect Subject To Refund in Docket Nos.
								Rate in Effect	Proposed Decreased Rate	
RI66-127	Hunt Oil Company, 1401 Elm Street, Dallas, Texas 75202.	26	[1] 1 to 7	Tennessee Gas Transmission Company (Bethany Field, Panola County, Texas) (R.R. District No. 6).	$25	4-28-66	[2] 4- 1-66	[5] [6] 14.6958	[3] [4] [5] 14.5	RI66-127

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[1] Letter dated April 27, 1966, being treated as a notice of change. Corrects previously filed notice of change.

[2] The date rate of 14.6958¢ per Mcf was placed into effect subject to refund in Docket No. RI66-127.

[3] Tax reimbursement decrease. Decrease due to no contractual basis for tax reimbursement at this time.

[4] Pressure base is 14.65 psia.

[5] Subject to a downward Btu adjustment.

[6] Includes base rate of 14.5¢ plus 0.1958¢ tax reimbursement.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7280

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued May 20, 1966)

Iowa Southern Utilities Company (Applicant) filed an application on March 28, 1966 seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to acquire certain electric facilities from Southwestern Federated Power Cooperative, Inc., (Southwestern) and to sell certain other electric facilities to Southwestern.

Applicant is incorporated under the laws of the State of Delaware and is qualified to do business in the State of Iowa with its principal business office at Centerville, Iowa. It is engaged primarily in the generation, transmission and sale of electric energy in 24 counties in south central and southeast Iowa.

Southwestern is a cooperative engaged in the generation and transmission of electric energy and supplies power to five cooperative distribution systems and to seven municipal systems.

Under an Interconnection and Joint Construction Agreement, dated July 28, 1965, the Applicant proposes to acquire and Southwestern proposes to sell two 69 KV transmission lines, one 3.95 miles in length extending from Southwestern's present substation near Osceola, Iowa, to Applicant's substation north of Osceola and the other 5.30 miles in length extending from Southwestern's Woodburn Junction Substation to Southwestern's Osceola Substation, for a cash consideration of $91,005. These lines have an original cost of $101,687, and an applicable accumulated provision of $10,682, for a depreciated original cost of $91,005, which amount is the same as the consideration. This purchase of facilities will not create an acquisition adjustment on the books of the Applicant.

Also, under the same Agreement, the Applicant proposes to sell and Southwestern proposes to acquire one 69/34.5 Kv transformer bank, located at Applicant's substation in Creston, Iowa, for a cash consideration of $6,210. This item of property has an original cost of $16,131, and an applicable accumulated provision for depreciation of $9,921, for a depreciated original cost of $6,210, which amount is the same as the consideration. This sale of plant will not create a gain or loss on the books of the Applicant.

Presently the western one-quarter of Applicant's system and the eastern one-half of the Southwestern system are super-imposed with Applicant serving the urban areas and Southwestern serving, through its distribution cooperatives, the rural areas. Applicant states that it is desirable, insofar as possible, that their respective ownership of facilities be continuous rather than alternate ownership of a given line. Therefore, in order to balance their respective investment in facilities in relation to the loads served and the benefits resulting from such facilities, Applicant states that it is necessary to transfer ownership of the facilities involved in this application. Applicant further states that if they had not entered into the above-mentioned Interconnection and Joint Construction Agreement both the Applicant and Southwestern would be forced to install substantially more facilities than are involved in this application.

Written notice of the application has been given to the Iowa State Commerce Commission and to the Governor of that State. Notice was also published in the Federal Register on April 13, 1966 (31 F.R. 5721), stating that any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 1, 1963, *Iowa Southern Utilities Company*, Docket No. E-7103 (30 FPC 1).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Southwestern, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition and sale of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition and sale of facilities by Applicant all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7281

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE SINKING FUND BONDS

(Issued May 23, 1966)

Montana-Dakota Utilities Co. (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of Minnesota, Montana, North Dakota, South Dakota and Wyoming, with its principal business office at Minneapolis, Minnesota, filed an application on March 29, 1966, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $10,000,000 principal amount of First Mortgage ——% Sinking Fund Bonds, due July 1, 1986.

Applicant proposes to issue the new Bonds under the provisions of its Indenture of Mortgage to the Chemical Bank New York Trust Company and John H. Baile as trustee, dated as of May 1, 1939, as supplemented and as to be further supplemented by a Twenty-sixth Supplemental Indenture to be dated June 1, 1966.

The Applicant intends, on or about May 25, 1966, to invite sealed, written proposals for the purchase of the $10,000,000 new Sinking Fund Bonds. The Statement of Terms and Conditions will contain the following principal provisions:

Each bid, which may be made by a single bidder or by a group of bidders, must be for the purchase of all the Bonds. No bidder may submit or participate in more than one bid. All bids must be presented to the Applicant at the offices of Chemical Bank New York Trust Company, Tenth Floor, 20 Pine Street, New York, N.Y., before 11:00 A.M., New York Time, on Thursday, June 2, 1966, and must be accompanied by deposits of $300,000.

Each bid shall specify the coupon rate, which rate shall be a multiple of ⅛ of 1%; and shall specify the price (exclusive of accrued interest) to be paid to the Applicant for the Bonds, which price shall not be less than 99% of principal amount. Each bid shall provide that accrued interest from June 1, 1966 to the date of payment therefor and delivery thereof will be paid by the purchaser or purchasers to the Applicant.

Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions, it will accept the bid which will provide for the lowest annual cost of money.

The net proceeds from the $10,000,000 new Bonds will be used for payment of $4,000,000 short-term notes issued in 1965 to provide temporary financing for part of the cost of constructing additions to the Applicant's electric and gas plant in 1965, and the balance of the proceeds will be used for payment of part of the cost of the Applicant's 1966 construction program. Applicant's 1966 construction program calls for the expenditure of $11.7 million of which $7.9 million is estimated for electric facilities, $3.3 million for gas, and $500,000 for common utility property. Of the $7.9 million scheduled for electric facilities, $100,000 has been budgeted for production plant, $5.5 million for transmission facilities, $2.2 million for distribution facilities and $50,000 for general plant. An application for certification of certain gas items is now pending before this Commission in Docket No. CP66–82.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, Montana Board of Railroad Commissioners, North Dakota Public Service Commission, South Dakota Public Utilities Commission, Wyoming Public Service Commission, and to the Governors of those States. Notice has also been given by publication in the Federal Register on April 12, 1966 (31 F.R. 5670), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 27, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued April 26, 1962, *Montana-Dakota Utilities Co.*, Docket No. E–7027 (27 FPC 844).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuances of securities are, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of $10,000,000 First Mortgage ——% Sinking Fund Bonds, upon the terms and conditions and for the purposes specified in the application as described above, are hereby authorized, subject to the provisions of this order.

(B) None of the proceeds from the issuance and sale of the new Bonds shall be used for the payment of the cost of construction for the gas facilities described in the application in Docket No. CP66-82 prior to the issuance of certificates of convenience and necessity in accordance with the Natural Gas Act.

(C) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(D) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7284

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued May 23, 1966)

Northern States Power Company (Applicant), filed an application on April 18, 1966, with the Federal Power Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue, from time to time, promissory notes in amounts not exceeding an aggregate amount of $40,000,000 outstanding at any one time to evidence short-term borrowing from commercial banks.

Applicant, a corporation organized under the laws of the State of Minnesota with its principal business office at Minneapolis, Minnesota, owns and operates utility properties and furnishes electric service at retail in 426 communities and adjacent territories and electric energy at wholesale for resale in 31 additional communities and at wholesale to rural electric cooperative associations and other utility companies located in Minnesota, North Dakota and South Dakota.

According to the application, promissory notes will be issued on various days and for various periods of time, but no note will mature more than 12 months after date of issue or renewal nor shall the maturity date of any note be later than October 31, 1967. Applicant states that the interest rate will be a rate that to the best knowledge and belief of the officers making the borrowings, does not exceed the prime loan interest rate at the time and place of making.

Applicant represents that it is its present intention, if, in the opinion of its directors and officers, market and economic conditions are favorable, to obtain funds for the prepayment of all of its promissory notes described above by offering at competitive bidding approximately $45,000,000 of First Mortgage Bonds on or about July 27, 1966. Applicant also intends to issue long-term and/or permanent securities in 1967.

According to the application, the proceeds from the bank borrowings to be evidenced by the promissory notes described above will be added to the general funds of the Applicant and used to pay in part the expenditures made and to be made in 1966 in connection with the Applicant's construction program. This program has an estimated cost of $74,600,000 in 1966. Included among Applicant's principal expenditures for its 1966 construction program are approximately $29,500,000 for its Allen S. King plant in Oak Park Heights, Minnesota, $3,800,000 for construction of approximately 100 miles of 345 kv transmission line from the Red Rock Substation to Adams Substation, $484,000 for the installation of transmission line outlet facilities at the Allen S. King plant, $502,000 for construction of 23.5 miles of 345 kv transmission line from Allen S. King plant to Terminal Substation, $779,000 for the installation of Terminal facilities at the Red Rock Substation, $1,535,000 for the installation of substation and line terminal facilities for the Allen S. King plant, and approximately $17,969,000 for distribution facilities.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on April 30, 1966 (31 F.R. 6554), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before May 10, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 3, 1965, *Northern States Power Company*, Docket No. E-7202 (33 FPC 942).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than October 31, 1967.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE ATLANTIC REFINING COMPANY, G-9283, G-9284, ET AL.; TENNESSEE GAS TRANSMISSION COMPANY, RP65-6; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65-7; HUMBLE GAS TRANSMISSION COMPANY, RP65-12; NORTHERN NATURAL GAS COMPANY, RP65-14; UNITED GAS PIPE LINE COMPANY, RP65-15; TEXAS GAS TRANSMISSION CORPORATION, RP65-16; KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., RP65-17; CITIES SERVICE GAS COMPANY, RP65-21; UNITED FUEL GAS COMPANY, RP65-22; FLORIDA GAS TRANSMISSION COMPANY, RP65-26; TEXAS EASTERN TRANSMISSION CORPORATION, RP65-27; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65-31

ORDER RELEASING REFUNDS IN PART

(Issued May 24, 1966)*

The Commission by order issued October 8, 1964, in *The Atlantic Refining Company*, Docket Nos. G-9283 and G-9284, *et al.*,[1] approved the settlement of

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* See order issued August 2, 1966 rejecting application for rehearing, etc., 36 FPC 351.

[1] 32 FPC 933.

The Atlantic Refining Company's (Atlantic) pending rate and certificate proceedings. That order, among other things, directed Atlantic to retain the amounts of refunds to be made (with certain limited exceptions) until further order of the Commission. The retention requirement was imposed in order to accomplish the Commission's policy that refunds should flow-through to the extent of its jurisdictional reach. *Humble Oil & Refining Company*, Docket Nos. G–9287 and G–9288, *et al.*, 32 FPC 49, 52.

The report of Atlantic's refund computation filed December 28, 1964 shows that approximately $5,381,000, exclusive of escrow earnings, will be refunded in these proceedings. In response to a letter from the Secretary or on their own initiative, all of Atlantic's customers to whom substantial amounts are refundable from Atlantic have filed reports setting forth their proposed disposition of these amounts. The customers' reports have been analyzed and it appears that the major portion of the refund amounts being retained by Atlantic would flow-through to the limits of the Commission's jurisdiction. Some amounts would not be flowed-through by Atlantic's direct (primary) customers, and these amounts are not included in the amounts to be released. Those amounts which Atlantic is to continue to retain will be dealt with in separate proceedings concerning the claims of the respective primary customers that they are entitled to retain such amounts and not flow them through. We emphasize that we are not now passing judgment on the merits of these claims.[2]

The reports filed by Trancontinental Gas Pipe Line Corporation (Transco), Texas Gas Transmission Company (Texas Gas), Northern Natural Gas Company, Humble Gas Transmission Company, Kansas-Nebraska Natural Gas Company, Inc., Natural Gas Pipeline Company of America, and Tennessee Gas Transmission Company (Tennessee Gas) indicate that substantially all the jurisdictional portion of the amounts refundable by Atlantic to these companies would be flowed-through.

The major portion of the amounts to be refunded by the primary customers listed above will flow-through to the extent of the Commission's jurisdictional reach. There are particular amounts, however, with respect to which subsequent jurisdictional customers do not recognize a flow-through obligation, and we are directing Transco and Texas Gas to retain certain amounts pending further order of the Commission. Transco is directed to retain amounts refundable to The Manufacturers Light and Heat Company and United Natural Gas Company. Those two companies have indicated previously that they recognize no flow-through obligation with respect to Transco's Docket No. RP61–13, under which Transco will flow-through the amounts refundable by Atlantic. Texas Gas is directed to retain amounts attributable to purchasers by Texas Eastern Transmission Corporation and The Ohio Fuel Gas Company; this provision applies to amounts received by Texas Gas both as a primary customer of Atlantic and as a secondary customer through Tennessee Gas. Texas Eastern has stated previously that it has no flow-through obligation with respect to Texas Gas' Docket No. RP61–15, and Ohio Fuel does not propose to flow-through any refunds to its resale customers.

The other primary customers of Atlantic to whom substantial amounts are refundable are Texas Eastern Transmission Corporation (Texas Eastern), Florida Gas Transmission Company (Florida Gas), United Fuel Gas Company (United Fuel), Cities Service Gas Company (Cities), and United Gas Pipe Line Company (United Gas). Each of these companies claims that it is entitled to retain all or part of the amount refundable by Atlantic, as discussed below.

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[2] See order issued October 4, 1965, in *Texas Eastern Transmission Corporation*, Docket No. RP66–12, 34 FPC 1099.

Texas Eastern and Florida Gas state that they would flow-through none of the Atlantic refunds, so those respective amounts must be retained.

United Fuel takes the position that it is not obligated to flow-through amounts refundable by Atlantic which reflect rates collected subject to refund in excess of 19.9 cents per Mcf. Therefore, we are releasing amounts representing the difference between the various settlement rates and 19.9 cents, and the balance of the refund will be retained by Atlantic.

The settlement by Cities in Docket No. RP64–9 utilized a cost-of-service which reflected Atlantic's settlement rates in the instant proceedings. Since Cities' settlement rates in Docket No. RP64–9 became effective as of April 23, 1964, we are directing Atlantic to release to Cities all amounts attributable to the period after April 22, 1964, which Cities will receive without further flow-through obligation. Atlantic is directed to retain all amounts refundable to Cities for the period from December 1, 1961 through December 22, 1961, with respect to which Cities recognizes only a partial obligation. Atlantic is also directed to retain amounts attributable to Docket No. RI63–213 for the period from its effective date, May 23, 1963, through April 22, 1964, with respect to which Cities recognizes no flow-through obligation.

United Gas is obligated to flow-through refund amounts reflecting purchases under Atlantic's Rate Schedule No. 48, and these amounts are being released. With respect to purchases under Atlantic's Rate Schedule No. 49, however, it appears that United Gas does not propose to flow-through refunds reflecting rates collected subject to refund in excess of 14.80 cents per Mcf. We are, therefore, releasing only that portion of the refunds attributable to purchases under Rate Schedule No. 49 which reflects the difference between the settlement rate and the rate of 14.80 cents for the entire refund period.

The Commission orders:

(A) Atlantic and Morgan Guaranty Trust Company (Escrow Agent), the escrow agent appointed by Atlantic pursuant to paragraph (G) of our order issued October 8, 1964, in *The Atlantic Refining Company*, Docket Nos. G–9283 and G–9284, *et al.*, are jointly directed to release and pay over within 45 days after the date of this order to Tennessee Gas Transmission Company, Natural Gas Pipeline Company of America, Humble Gas Transmission Company, Northern Natural Gas Company, Texas Gas Transmission Corporation, Kansas-Nebraska Natural Gas Company, Inc., Transcontinental Gas Pipe Line Corporation, and Southern Union Gathering Company, the amounts indicated to be refundable to those customers in the refund report filed by Atlantic on December 28, 1964, together with the net earnings of the escrow account attributable to each of these principal sums.

(B) Atlantic and the escrow agent are jointly directed to release and pay over within 45 days after the date of this order to United Gas Pipe Line Company, Cities Service Gas Company, and United Fuel Gas Company the amounts indicated to be refundable to those customers in the refund report filed by Atlantic on December 28, 1964, together with the net earnings of the escrow account attributable to each of these principal sums, *except that*, the Escrow Agent shall retain the following principal sums together with the associated escrow earnings:

1. That portion of the refund which is attributable to purchases by United Gas Pipe Line Company under Atlantic's Rate Schedule No. 49 and which represents the difference between a rate of 14.80 cents per Mcf at 14.65 psia and rates collected subject to refund in excess of this rate.

2. That portion of the refund which is attributable to purchases by Cities Service Gas Company during the period from December 1, 1961 through Decem-

ber 22, 1961, and that portion which is attributable to purchases under Atlantic's Rate Schedule No. 163 during the period from May 23, 1963 through April 22, 1964.

3. That portion of the refund which is attributable to purchases by United Fuel Gas Company under Atlantic's Rate Schedule Nos. 63 and 166 and which represents the difference between a rate of 19.9 cents per Mcf at 15.025 psia and rates collected subject to refund in excess of that rate.

(C) Within 60 days after the date of this order, Atlantic shall submit a report showing the amount received by each customer named in paragraphs (A) and (B) above and the amounts which the Escrow Agent will continue to retain pursuant to paragraph (B) above. The amounts deposited with the Escrow Agent and the allocable portion of the earnings of the escrow account shall be shown separately with respect to each customer.

(D) Except as specifically ordered hereinafter to retain amounts and defer the flow-through to specified parties, each company shall flow-through the refunds received pursuant to this order in accordance with applicable Commission orders and settlement agreements. Companies which flow-through amounts received pursuant to this order shall submit a report showing the details of their refund within 15 days after the refund is made or within the time specified in the applicable order or settlement agreement, whichever is later.

(E) Transcontinental Gas Pipe Line Corporation shall, pending further order of the Commission, retain and defer the flow-through of those portions of amounts received pursuant to paragraph (A) above which are attributable to purchases by:

1. The Manufacturers Light and Heat Company
2. United Natural Gas Company

(F) Texas Gas Transmission Corporation shall, pending further order of the Commission, retain and defer the flow-through of those portions of amounts received pursuant to paragraph (A) above, including amounts received from Tennessee Gas Transmission Company, which are attributable to purchases by:

1. Texas Eastern Transmission Corporation
2. The Ohio Fuel Gas Company

(G) United Gas Pipe Line Company shall retain and defer the flow-through of those portions of amounts received pursuant to paragraphs (A) and (B) above, including amounts received from Tennessee Gas Transmission Company, which are attributable to purchases by its pipeline customers other than Mississippi River Transmission Corporation, as provided by paragraph (K) of Opinion No. 428–A, 32 FPC 687, and by the order issued April 21, 1965, 33 FPC 837, and letter–order issued November 24, 1965 in Docket No. RP61–18, *et al.*

(H) The amounts ordered to be retained pursuant to paragraphs (E) and (F) above shall be retained in accordance with the methods set forth in paragraph (J) of the Commission's order issued April 21, 1965 in *Humble Oil & Refining Company*, Docket Nos. G–9287 and G–9288, *et al.*, 32 FPC 830. Within 30 days after the receipt of refunds pursuant to this order, Transco and Texas Gas shall each submit a report showing the amounts to be retained in accordance with this paragraph and the manner in which such amounts will be retained, and shall serve such report on the respective customers.

(I) Where amounts have been retained pursuant to paragraphs (B), (E), (F), and (G) above and the party which would otherwise have received such amounts is presently obligated to pass on such amounts by prior order of the Commission or will voluntarily assume the obligation to pass on such amounts, a report setting forth the details of such obligation or an agreement assuming the obligation to pass on the refund shall be filed by such party within 20 days after the date of this order.

(J) Pending further order of the Commission, Atlantic and the Escrow Agent shall retain all remaining refundable amounts in accordance with paragraphs (E) and (G) of the order issued October 8, 1964 in these proceedings.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, ET AL., DOCKET NO. CP66-226, ET AL.

ORDER PERMITTING INTERVENTION AND GRANTING WITHDRAWAL OF PRIOR INTERVENTIONS

(Issued May 24, 1966)

On March 7, 1966, W. E. Bakke, d/b/a, W. E. Bakke Oil Co., petitioned the Commission to intervene in the above consolidated proceeding because of its alleged interest therein due to the fact that Bakke sells gas from its Kansas-Hugoton wells to Pan American Petroleum Corp., which sells the gas to Cities Service Gas Co. No opposition to Bakke's petition has been filed.

On March 3, 1966, E. A. Stansfield filed a notice of withdrawal in behalf of Public Service Co. of Colorado, Cheyenne Light, Fuel and Power Co., Pueblo Gas and Fuel Co., and Colorado-Wyoming Gas Co. (now Western Slope Gas Co.).

The Commission further finds:

It is desirable to allow W. E. Bakke to become an intervenor in this proceeding in order that he may establish the facts and law from which the nature and validity of his alleged rights and interests may be determined and what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) W. E. Bakke, d/b/a, W. E. Bakke Oil Co., is permitted to become an intervenor in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in his said petition for leave to intervene; and *provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that he might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The Public Service Co. of Colorado, Cheyenne Light, Fuel and Power Co., Pueblo Gas and Fuel Co., and Colorado-Wyoming Gas Co., (now Western Slope Gas Co.), are permitted to withdraw as intervenors in this proceeding.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP66-290

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On March 14, 1966, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP66-290 an application pursuant to Section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities, all as more fully set forth in the application.

Specifically, Applicant will construct and operate the following new facilities:

(1) Approximately 10.6 miles of 20-inch pipeline extending from its Utica, New York, compressor station in an easterly direction, parallel to its Line No. 30, to the Herkimer Connection, all in Herkimer County, New York, and

(2) approximately 19.8 miles of 20-inch pipeline extending from the present southern terminus of its Line No. 554 at the Genessee Falls Gate, Wyoming County, New York, in a southerly direction and parallel to Lines 14 and 24, to the Angelica Gate in Allegany County, New York.

The facilities described in paragraph (1) above are required to increase the capacity of the portion of Applicant's transmission system which extends from the Utica compressor station to Albany, New York. This portion of the system is used to serve a part of the requirements of Niagara Mohawk Power Corporation.

The facilities described in paragraph (2) above are required to increase the capacity of that portion of Applicant's transmission system which extends from the State Line compressor station near the Pennsylvania-New York state line north to Monroe County, New York. This portion of the transmission system serves principally the increasing requirements of Rochester Gas and Electric Corporation.

Applicant supplies all of the natural gas requirements of both of these customers under currently effective service agreements which are on file with the Commission. The increased requirements of these customers for natural gas represent normal growth in residential and commercial space heating in the present market areas served by Applicant. No new service is proposed in connection with this application.

The above-described facilities are required to meet the peak-day requirements of Applicant's customers beginning with the 1966–67 winter.

The estimated costs of the facilities to be constructed by Applicant are $890,000 for the 10.6 mile loop and $1,590,000 for the 19.8-mile loop, for a total of $2,480,000. The cost of construction will be financed from cash on hand and from funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company, through the issuance of notes of face value or through the issuance of common stock, or a combination of both.

Due notice of the filing of the application was published in the Federal Register on March 29, 1966 (31 F.R. 5024). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 2, 1965, in Docket No. CP63–272 (33 FPC 150).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Consolidated Gas Supply Corporation, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by November 1, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–12793

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On February 24, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. G–12793 a petition and supplements thereto on April 4, and April 22, 1966, to amend paragraph (D) of the order of the Commission issued in said docket on September 10, 1957, 18 FPC 321, as amended on September 24, 1958, 20 FPC 396, so as to authorize Petitioner to change deliveries of firm and interruptible gas to San Francisco Chemical Company (San Francisco) to firm gas and increase the volume thereof for use in its phosphate processing plant located near Sage, Wyoming, all as more fully set forth in the petition to amend.

On September 10, 1957, Pacific Northwest Pipeline Corporation[1] (El Paso's predecessor) received authorization in the subject docket to deliver up to 300 Mcf (approximately 3000 therms) of natural gas per day, on an interruptible basis, to Chemical Company for use in its fertilizer plant near Sage, Wyoming. Paragraph (D) of the subject order was amended on September 24, 1958, so as to authorize Pacific Northwest to increase its deliveries to Chemical Company from 300 Mcf per day of interruptible gas to a maximum of 100 Mcf (approximately 1000 therms) of firm gas and 1,400 Mcf (approximately 14,000 therms) of interruptible gas per day.

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[1] Pacific Northwest Pipeline Corporation is a part of El Paso Natural Gas Company. El Paso has been directed by order of the court to divest Pacific Northwest from El Paso.

In the instant petition, as supplemented, Petitioner wishes to further amend the subject order and to change its daily deliveries to Chemical Company from 1,000 therms of firm gas and 14,000 therms of interruptible gas to 18,000 therms of firm gas.

Due notice of the filing of the petition to amend and opportunity for hearing has been given by publication in the Federal Register on March 12, 1966 (31 F.R. 4363). No protest, petition to intervene, notice of intervention or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued September 10, 1957, in Docket No. G-12793 be further amended, as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 10, 1957, in Docket No. G-12793 and as amended on September 24, 1958, is further amended so as to modify paragraph (D) of the said order and authorize Petitioner to change the maximum volume of natural gas to be delivered to San Francisco from 1,000 therms of firm gas and 14,000 therms of interruptible gas per day to 13,500 therms (as agreed to by Petitioner in its second Supplement filed herein on April 22, 1966) of firm gas per day.

(B) The certificate order issued in Docket No. G-12793 is amended on the express condition that the firm service authorized herein shall not entitle San Francisco to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increase in their requirements.

(C) In all other respects said order shall remain in full force and effect.

(D) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EQUITABLE GAS COMPANY, DOCKET NO. CP66-293

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On March 18, 1966, Equitable Gas Company (Applicant), filed in Docket No. CP66-293 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Wetzel County, West Virginia, all as more fully set forth in the application.

Applicant seeks authorization to install and operate the equipment necessary to supercharge two existing gas engines from 660 horsepower to 800 horsepower each, at its Logansport Compressor Station, Wetzel County, West Virginia. The basic equipment to be added includes turbo-charger and manometer assemblies, exhaust manifold, air manifold assembly, air filter and parallel air piping and revisions of existing air, water and exhaust piping together with larger gas cooling equipment.

The facilities proposed to be installed will provide additional pumping capacity necessary to continue the development phase of Applicant's Mobley Storage Pool.

The estimated cost of the facilities to be constructed by Applicant is $70,000, which will be defrayed from funds on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Equitable Gas Company, a Pennsylvania corporation, having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 9, 1944, in Docket No. G–275 (4 FPC 558).

(2) The proposed construction and operation of facilities as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Equitable Gas Company, in this proceeding authorizing the construction and operation of facilities as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66–25

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 24, 1966)

On February 3, 1966, Illinois Power Company (Applicant), filed in Docket No. CP66–254 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the communities of Seaton and Little York and environs in Mercer and Warren Counties, Illinois, and the communities of Andover, Osco, Ophiem and Lynn Center and environs in Henry County, Illinois, all as more fully set forth in the application.

Specifically, Applicant proposes to construct approximately 21.3 miles of 2-inch lateral pipeline (12.5 miles to serve Seaton and Little York and 8.8 miles to serve Andover, Osco and Lynn Center), and a distribution system for each of the above communities and appurtenant regulator facilities. Applicant also requests that Respondent construct a total of approximately 2.45 miles of lateral pipeline, pursuant to its "ten-cent formula", extending from its main line to Applicant's proposed 2-inch lateral pipelines and to the distribution system proposed for Ophiem.

The total estimated volumes of natural gas necessary to meet the annual and peak day requirements of the communities of Seaton and Little York for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	21,660	28,046	35,539
Peak day (Mcf)	217	286	365

The total estimated volumes of natural gas necessary to meet the annual and peak day requirements of the communities of Andover, Osco, and Lynn Center for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	19,237	24,304	30,629
Peak day (Mcf)	204	257	323

The total estimated volumes of natural gas necessary to meet the annual and peak day requirements of the community of Ophiem for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	5,788	6,608	7,586
Peak day (Mcf)	92	101	110

The total estimated cost of constructing distribution system and appurtenant 2-inch lateral and regulator facilities for the communities of Seaton and Little York; Andover, Osco, and Lynn Center; and Ophiem are $210,000, $174,200, and $13,700, respectively.

Applicant has obtained all necessary franchises to supply natural gas in said communities and on December 22, 1965, the Illinois Commerce Commission in its Docket No. 51865 granted Applicant a certificate to construct and operate the necessary facilities and to sell gas therein.

On March 3, 1966, Michigan Wisconsin filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to extend its facilities, establish connection of its facilities and provide the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on February 18, 1966, (31 F.R. 2908). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order dated November 30, 1946 in Docket No. G–699 (5 FPC 953).

(2) Applicant, Illinois Power Company, an Illinois corporation having its principal place of business in Monticello, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to sell and deliver to Applicant, under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 365 Mcf for Seaton and Little York, 323 Mcf for Andover, Osco and Lynn Center and 110 Mcf for Ophiem on a maximum day for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the named communities, and their environs, within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company is directed to sell and deliver to Applicant up to 365 Mcf for Seaton and Little York, 323 Mcf for Andover, Osco and Lynn Center and 110 Mcf for Ophiem on a maximum day under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein one year from the date of issuance of this order.

(D) This order shall be effective upon the issuance of the Commission's order in Docket No. CP66–208, *infra*, p. 777.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-271

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 24, 1966)

On February 18, 1966, Illinois Power Company (Applicant), filed in Docket No. CP66-271 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the unincorporated communities of Olivet and Vermilion Grove and environs, Vermilion County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct distribution systems in Olivet and Vermilion Grove together with a 2-inch pipeline, 2.6 miles in length, extending from Respondent's transmission line to said distribution systems. Applicant also proposes that Respondent construct a sales meter station to service the proposed interconnection of facilities.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	17,561	20,131	22,280
Peak day (Mcf)	190	222	236

The total estimated cost of Applicant's proposed transmission and distribution systems is $81,045, which cost will be financed from funds on hand.

On February 23, 1966, Respondent was duly advised of the application filed in this proceeding, and due notice of the filing and opportunity for hearing thereon has been given by publication in the Federal Register on March 9, 1966 (31 F.R. 4174). No protest, petition to intervene or request for hearing has been filed in this proceeding.

On January 25, 1966, the Illinois Commerce Commission in its Docket No. 52000 granted Applicant a certificate to construct and operate the necessary facilities and to sell gas to the public in the above-mentioned villages.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 236 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) The requirement that Respondent serve Applicant as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in the Villages of Olivet and Vermilion Grove and environs in Vermilion County, Illinois, within one year from the date of issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Illinois Power Company as herein described, and to sell and deliver up to 236 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Panhandle Eastern's currently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE INLAND GAS COMPANY, INC., DOCKET NO. CP66-313

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On April 1, 1966, The Inland Gas Company, Inc. (Applicant) filed in Docket No. CP66-313 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 420 feet of 3½-inch natural gas pipeline and regulating and measuring facilities for use in the sale and delivery of natural gas to Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application.

The application states that Air Products' plant is located in Boyd County, Kentucky, approximately 420 feet from Applicant's existing 16-inch transmission pipeline which extends north from Floyd County, Kentucky.

Air Products will use the natural gas to manufacture hydrogen and will require annual and maximum day volumes of 91,250 Mcf and 300 Mcf, respectively. Applicant and Air Products have entered into a letter agreement providing for the sale of gas.

The total estimated cost of the facilities to be constructed by Applicant is $3,510, which will be financed from cash on hand.

Due notice of the filing of the application was published in the Federal Register on April 16, 1966 (31 F.R. 5917). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Inland Gas Company, Inc., a Kentucky corporation having its principal place of business in Ashland, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 18, 1962, in Docket No. CP61–266 (28 FPC 683).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, The Inland Gas Company, Inc., authorizing the construction and operation of the facilities hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by June 30, 1966.

Before Commissioners: **Lee C. White, Chairman; L. J. O'Connor, Jr.,** Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY,* DOCKET NO. CP66-208

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On December 27, 1965, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP66-208 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain natural gas facilities and the lease of the Loreed Field, in west central Michigan, from Michigan Consolidated Gas Company (Michigan Consolidated) in order to increase by 264,000 Mcf its daily system sales capacity and to sell and deliver additional gas to existing customers and to accommodate anticipated requests for service to new communities, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes the following:

(1) To construct and operate 83.3 miles of 6 to 24-inch gas supply laterals and 5,500 compressor horsepower in order to attach 1,351,419 MMcf of proven dedicated reserves located in fourteen fields in southern Louisiana. Of these proposed laterals, 2.9 miles of 6-inch pipe is for the proposed Redfish Point Lateral necessary to receive gas proposed to be sold by Gulf Oil Corporation (Gulf) in Docket No. CI66-453 and 17 miles of 12-inch pipe is for the proposed Vermilion Bay Lateral necessary to receive gas proposed to be sold by Texaco Inc. in Docket No. CI66-484. Neither Gulf nor Texaco has received authorization from this Commission to sell gas in those respective dockets. Accordingly, authorization for the construction of the Redfish Point and Vermilion Bay Laterals shall hereinafter be appropriately conditioned upon Gulf and Texaco receiving the necessary Commission authorization.

(2) To construct and operate 527 miles of 30-inch main pipeline loop in the States of Louisiana, Mississippi, Tennessee, Indiana, Ohio and Michigan and in the Commonwealth of Kentucky.

(3) To construct and operate 660 compressor horsepower at Slaughters, Kentucky, to elevate the pressure of the gas purchased at that point from Texas Gas Transmission Corporation.

(4) To construct and operate 2,200 compressor horsepower each at Stations "A" and "B" in Michigan and 4,400 compressor horsepower at Station "A" in Illinois.

(5) To construct and operate 12.9 miles of 10-inch loop on the Keokuk lateral and 9.5 miles of 8-inch loop on the Burlington lateral, both in Iowa, and 8.7 miles of 12-inch loop on the Racine lateral in Wisconsin.

(6) To construct and operate a new line consisting of 90.1 miles of 12-inch pipeline from Applicant's North Madison measuring station to a point near Weyauwega, Wisconsin. Applicant states that this new line is more desirable than the alternative of further looping the existing system from Milwaukee to Green Bay.

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* Michigan Wisconsin Pipe Line Company and American Louisiana Pipe Line Company, as joint Applicants, filed this application prior to and in anticipation of their merger. By Commission order issued December 23, 1965, in Docket No. CP66-65, 34 FPC 1539, the merger was authorized and became effective January 1, 1966. As the surviving company of that merger, Michigan Wisconsin Pipe Line Company will be treated as the sole Applicant in the subject docket.

Further, Applicant proposes to lease the Loreed Field from Michigan Consolidated and to operate it as a natural gas underground storage field. Loreed Field is a depleted oil field which Michigan Consolidated has been developing for gas storage usage since 1962. Total gas content is estimated to be 21,600,000 Mcf at the beginning of the 1966 withdrawal season; of this amount 9,570,000 will be cushion gas and 12,030,000 Mcf will be working storage. The application indicates that at ultimate development sometime about the end of 1973, the total gas content is estimated to be 49,300,000 Mcf with 17,700,000 Mcf being cushion gas and 31,600,000 Mcf being working storage. The ultimate delivery capability is estimated to be 1,000,000 Mcf per day and the maximum reservoir pressure is estimated to be 2,000 psia. Applicant's lease rental payments will be based on a cost of service formula that includes a 6.5 percent rate of return.

The total estimated cost of the proposed facilities is $75,600,000, which cost will be financed initially by borrowings, retained earnings and other funds generated internally, and by the sale of first mortgage pipe line bonds.

The subject proposals will increase Applicant's daily system sales capacity from 2,168,000 Mcf to 2,432,000 Mcf. Of this 264,000 Mcf increase 212,000 Mcf will be utilized to meet the needs of existing customers for the 1966–67 heating season and the remaining 52,000 Mcf will be unallocated gas to accommodate anticipated requests for service to new communities.

Several petitions to intervene and notices of intervention have been filed herein. None of said petitions or notices requests formal hearing in this proceeding or objects to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petitions or notices appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof, the operation of the storage field and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities, the lease and operation of the subject storage field and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Applicant should not construct the Vermilion Bay Lateral to the West Cote Blanche Bay Field consisting of 17 miles of 12-inch line until Texaco Inc. receives and accepts requisite authorization in Docket No. CI66-484.

(7) Applicant should not construct the Redfish Point Lateral consisting of 2.9 miles of 6-inch line until Gulf Oil Corporation receives and accepts requisite authorization in Docket No. CI66-453 and Texaco Inc. also receives and accepts the requisite authorization referred to in paragraph (6) above.

(8) The maximum inventory of gas stored in the Loreed Storage Field should not exceed 49,300,000 Mcf at 14.73 psia and the maximum reservoir pressure should not exceed 2,000 psia without prior authorization of the Commission.

(9) Applicant should submit semiannual reports as hereinafter prescribed.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Michigan Wisconsin Pipe Line Company, to construct and operate the proposed facilities, to operate the Loreed Storage Field to be leased from Michigan Consolidated and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Applicant shall not construct the Vermilion Bay Lateral to the West Cote Blanche Bay Field consisting of 17 miles of 12-inch line until Texaco Inc. receives and accepts requisite authorization in Docket No. CI66-484.

(E) Applicant shall not construct the Redfish Point Lateral consisting of 2.9 miles of 6-inch line until Gulf Oil Corporation receives and accepts requisite authorization in Docket No. CI66-453 and Texaco Inc. also receives and accepts the requisite authorization referred to in paragraph (D) above.

(F) The maximum inventory of gas stored in the Loreed Storage Field shall not exceed 49,300,000 Mcf at 14.73 psia and the maximum reservoir pressure shall not exceed 2,000 psia without prior authorization of the Commission.

(G) Applicant shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information on the proposed operations:

(a) The volumes of gas injected or withdrawn each month and the corresponding total volume in the reservoir;

(b) The maximum daily injection or withdrawal volumes experienced during the month;

(c) The average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;

(d) The stabilized shut-in wellhead pressure of each observation and active well when pressure stabilization exists and the water level in each observation well not showing gas;

(e) A map of the most recent interpretation of underground structure and the area occupied by the gas bubble showing for each well, the date on which gas was first noted during or after injection and the date on which water encroached during or after withdrawal;

(f) A tabulation of wells drilled, cleaned or recompleted with subsea depths of formations and casing settings. Copies of any core analyses, back-pressure tests or electric logs, and

(g) Reports shall continue to be filed until the storage inventory volume has reached or closely approximated the maximum volume permitted in paragraph (F) above and for two years thereafter.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-13

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On April 5, 1966, Natural Gas Pipeline Company of America (Petitioner), filed in Docket No. CP64-13 a petition to amend the certificate of public convenience and necessity issued in that docket on October 10, 1963, 30 FPC 993, by authorizing Petitioner to increase the inventory in its Keota Storage area above the presently prescribed 1,500,000 Mcf limit, all as more fully set forth in the petition to amend.

By the certificate issued on October 10, 1963, Petitioner was authorized to test and develop an underground natural gas storage reservoir, known as the Keota Storage area, located in Washington County, Iowa. The maximum authorized storage inventory was limited to 1,500,000 Mcf of natural gas.

Petitioner states that injection of natural gas into the reservoir has continued since November 14, 1963, except for withdrawal testing during the 1965-66 heating season and that the limit will be reached by April 10, 1966. Petitioner further states that orderly development of the Keota Storage area and growth of the inventory to the level required for use for service to Petitioner's customers requires continued injection of gas without interruption. In order to serve the customers' storage needs during the winter of 1966-67, Petitioner requests that the authorized inventory limitation be increased to 2,000,000 Mcf of natural gas, to become available by November, 1966.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 15, 1966 (31 F.R. 5848). No protest, petition to intervene or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 10, 1963, in Docket No. CP64-13, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 10, 1963, in Docket No. CP64-13 is amended so as to modify the provisions of Ordering Paragraph (D) and authorize Natural Gas Pipeline Company of America to increase the inventory volume of 1,500,000 Mcf in the Keota Storage area to 2,000,000 Mcf, as requested in its said petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PENNSYLVANIA GAS COMPANY, DOCKET NO. CP64-199

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On March 18, 1966, Pennsylvania Gas Company (Petitioner) filed in Docket No. CP64-199 a petition, as supplemented on April 14, 1966, to amend the certificate of public convenience and necessity issued in said docket on May 25, 1964, 31 FPC 1284, requesting authorization to construct 6.9 miles of pipeline from Sugar Grove in Warren County, Pennsylvania, in a southerly direction to a point on Petitioner's main pipeline in Warren County, Pennsylvania, all as more fully set forth in the petition to amend.

The original application in this docket filed on March 9, 1964, requested a certificate authorizing the construction and operation of 16.2 miles of 12-inch pipeline to replace an 8-inch pipeline which had been constructed in the year 1885. Petitioner subsequently amended the application by letter dated March 13, 1964, and deleted the request for authorization to construct the 6.9-mile segment of the proposed 12-inch pipeline.

A certificate of public convenience and necessity was issued in this docket on May 25, 1964, authorizing the construction and operation of 9.3 miles of 12-inch pipeline extending from Sugar Grove Township in Warren County, Pennsylvania, to the city of Jamestown in Chautauqua County, New York.

Petitioner states that the 6.9 miles of 12-inch pipeline which was deleted from the original application will be required during 1966. Petitioner therefore requests permission to replace the balance of the 8-inch pipeline constructed in 1885 with the 6.9 miles of 12-inch pipeline.

The estimated cost of construction is $283,500, which will be financed from retained earnings, depreciation accruals and from the proceeds of long-term installment promissory notes to be issued to Petitioner's parent company, National Fuel Gas Company.

Petitioner states that it does not desire to abandon the entire 8-inch pipeline at this time. Approximately one mile of the 8-inch pipeline will be removed from service upon installation of the 12-inch pipeline. Certain segments of the remaining 5.9 miles of the 8-inch pipeline will be used as by-passes while a parallel 10-inch pipeline is relocated due to New York State highway construction.

Due notice of the filing of the petition to amend was published in the Federal Register on April 7, 1966 (31 F.R. 5531). No protest, petition to intervene or Notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 25, 1964, in Docket No. CP64–199, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Pennsylvania Gas Company on May 25, 1964, in Docket No. CP64–199 is amended by authorizing the construction and operation of 6.9 miles of 12-inch pipeline from Sugar Grove Township in Warren County, Pennsylvania, to Petitioner's main pipeline in Warren County, as described above and as more fully described in the petition to amend, upon the terms and conditions of this order.

(B) Petitioner shall notify the Commission of the completion of the relocation of the 10-inch pipeline required by the New York State highway construction within 10 days of the completion of such relocation.

(C) Petitioner shall submit a proper filing pursuant to Section 7(b) of the Natural Gas Act for permission for and approval of the abandonment of the 8-inch pipeline constructed in 1885 within 30 days after the required notification submitted pursuant to paragraph (B) above or, in the alternative, submit to the Commission evidence of good cause for the continued operation of said 8-inch pipeline.

(D) In all other respects said certificate, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES OF PRINCETON AND MERCER, MISSOURI, AND LINEVILLE, IOWA, AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66–240

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 24, 1966)

On January 27, 1966, the Cities of Princeton and Mercer, Missouri, and Lineville, Iowa, (Applicants) filed in Docket No. CP66–240 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transmission facilities with the facilities to be constructed by Applicants and to sell and deliver to Applicants a total of up to 1,459 Mcf of natural gas per day for resale and distribution in the respective communities, all as more fully set forth in the application.

Lineville is located in Wayne County, Iowa, on the Iowa-Missouri border, approximately three miles due south of the nearest point on the portion of Respondent's main transmission system which traverses southern Iowa. Mercer is located in Mercer County, Missouri, approximately five miles south of Lineville. Princeton is also located in Mercer County, Missouri, and is approximately eight miles south of Mercer. Princeton is the largest of the three communities with an estimated population of 1,506.

The lateral pipeline required for service to the three Applicants will extend approximately 16.1 miles in a southerly direction from Respondent's transmission pipeline. Applicants propose that Respondent construct approximately 5.1 miles of 4½-inch O.D. lateral pipeline pursuant to its "ten-cent formula". Princeton will construct 11 miles of 3½-inch O.D. pipeline which will join the pipeline to be constructed by Respondent at a point between the communities of Mercer and Lineville.

Each of the three communities will construct and operate its own municipal gas distribution system. Princeton will also construct and operate metering stations at Mercer and Princeton in addition to the aforementioned 11 miles of pipeline.

Lineville will be served from Respondent's portion of the lateral pipeline, and Princeton and Mercer will be served from the portion to be constructed by Princeton. Princeton will charge Mercer 15 cents per Mcf for the transportation service to be provided by Princeton's facilities.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations are as follows:

Annual	First year	Second year	Third year
Princeton	49, 397	69, 207	90, 239
Mercer	14, 180	18, 367	25, 266
Lineville	17, 912	26, 015	31, 164
Total	81, 489	113, 589	146, 669
Peak day			
Princeton	517	675	887
Mercer	147	192	262
Lineville	176	258	310
Total	840	1, 125	1, 459

These purchases will be made under Respondent's SGS–1 Rate Schedule at a flat rate of 44.7 cents per Mcf.

The total estimated costs to the cities of Lineville and Mercer of constructing their proposed distribution systems are approximately $89,000 and $55,000, respectively. The total estimated cost to the city of Princeton of constructing its distribution system, pipeline lateral and metering stations is $315,000. The financing of the proposed facilities will be by means of Gas Revenue Bonds to be issued separately by each city.

On March 3, 1966, Respondent filed an answer to the application. Respondent has no objection to the granting of the application and is willing to construct approximately 5.1 miles of pipeline lateral, provided its expansion proposal filed on December 27, 1965, in Docket No. CP66–208 is approved. Authorization for the expansion is being issued concurrently herewith in Docket No. CP66–208, *supra*, p. 777.

Due notice of the filing of the application was published in the Federal Register on February 16, 1966 (31 F.R. 2799). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan, is a "natural-gas company"

within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicants are municipalities in their respective states and are authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along their systems.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities to be constructed by Applicants, to construct and operate approximately 5.1 miles of pipeline lateral and to sell and deliver up to a total of 1,459 Mcf of natural gas per day to the Applicants, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve the Applicants, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicants, to construct and operate approximately 5.1 miles of pipeline lateral and to sell and deliver up to a total of 1,459 Mcf of natural gas per day to Applicants, all as hereinbefore described and as more fully described in the application.

(B) Applicants shall be prepared to receive natural gas from Respondent at the proposed connections within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with each Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66–303

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1966)

On March 24, 1966, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP66–303 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization for the construction and operation of 14.18 miles of 36-inch O.D. loop pipeline on the Delta–Portland (D–P) portion of its mainline system between MLV No. 547 and MLV No. 548. Applicant states that its D–P line extends in a northeasterly direction from the Louisiana Delta area, 556 miles to its Compressor Station No. 87 near Portland, Tennessee.

The installation and operation of this proposed pipeline will provide Applicant with a dual pipeline system from the Louisiana Delta area to its Compressor Station No. 87. Applicant now has only a single pipeline between the aforementioned valve sections and it must eliminate this bottleneck which, in the event of a pipeline failure between said two mainline valves, would result in Applicant's being unable to transport 1.25 billion cubic feet of gas per day during such failure.

The total estimated cost of Applicant's proposed construction is $2,377,000, which will be financed from general funds or from revolving credit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed construction and operation of facilities as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all the applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES OF UNIONVILLE AND MILAN, MISSOURI, AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-238; IOWA SOUTHERN UTILITIES COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-239

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 24, 1966)

On January 27, 1966, the Cities of Unionville and Milan, Missouri, filed in Docket No. CP66-238 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish a physical connection of its transmission facilities with the facilities to be constructed by the Cities and to sell and to deliver up to 1,867 Mcf per day of natural gas to Unionville and up to 1,592 Mcf per day to Milan for resale and distribution in their respective communities. On the same day, Iowa Southern Utilities Company (Iowa Southern) filed an application in Docket No. CP66-239 pursuant to Section 7(a) of the Natural Gas Act for an order directing Respondent to establish a physical connection between its transmission facilities with the facilities to be constructed by Iowa Southern and to sell and deliver up to 324 Mcf of natural gas per day to Iowa Southern for resale and distribution in the community of Cincinnati, in Appanoose County, Iowa. The proposals are more fully set forth in the respective applications.

Respondent will construct and operate approximately 17 miles of 4½-inch O.D. pipeline lateral extending from its transmission pipeline near Jerome, Iowa, in a southerly direction where it will interconnect with 21 miles of 3½-inch O.D. pipeline lateral extending from Unionville to Milan, Missouri, to be constructed by the City of Milan. Iowa Southern will construct and operate approximately two miles of 2⅜-inch O.D. pipeline lateral from the Unionville lateral to Cincinnati.

The estimated maximum day and annual requirements of natural gas for all three communities during the first three years of proposed operations are as follows:

Annual	First year	Second year	Third year
Cincinnati	18, 362	26, 295	31, 405
Unionville	113, 364	173, 618	207, 925
Milan	191, 839	235, 284	262, 959
Total	323, 565	435, 197	502, 289
Maximum Day			
Cincinnati	189	271	324
Unionville	1, 125	1, 528	1, 867
Milan	980	1, 317	1, 592
Total	2, 294	3, 116	3, 783

Milan and Unionville will each construct and operate distribution systems in their respective communities. The estimated cost of the distribution facilities to be constructed by Unionville is $450,000. The estimated costs of the 21 miles of pipeline lateral and the distribution system to be constructed by Milan are $248,000 and $267,000, respectively. Each city will finance its construction by a separate issue of Gas Revenue Bonds.

Iowa Southern will construct and operate the distribution system in Cincinnati and the two miles of pipeline lateral at estimated construction costs of $61,157 and $21,059, respectively. The construction by Iowa Southern will be financed by internally generated funds and short-term bank loans.

Iowa Southern has obtained a franchise which was approved by the voters of Cincinnati on December 3, 1965. Iowa Southern will apply for a franchise from the Iowa Commerce Commission for the facilities to be constructed outside the corporate limits of Cincinnati when this order is issued.

On March 3, 1966, Respondent filed answers to the applications in Docket Nos. CP66–238 and CP66–239. Respondent indicated that it has no objection to either proposal, provided it is authorized to expand its facilities pursuant to the program set forth in its application filed in Docket No. CP66–208 on December 27, 1965. The authorization in Docket No. CP66–208 is being issued concurrently herewith, *supra*, p. 777. Respondent also agreed to construct and operate approximately 17 miles of 4½-inch O.D. pipeline lateral, as proposed in the instant applications.

Notices of the filing of the applications in Docket Nos. CP66–238 and CP66–239 were published in the Federal Register on February 16, 1966 (31 F.R. 2799 and 31 F.R. 2801, respectively). No protest, petition to intervene or notice of intervention has been filed in either proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Unionville and Milan are municipalities in the State of Missouri, and Iowa Southern is a public utility company in the State of Iowa, and, as such, the Applicants are authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along their systems.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities to be constructed by Applicants, to construct and operate approximately 17 miles of 4½-inch O.D. pipeline lateral and to sell and deliver up to 1,867 Mcf per day and 1,592 Mcf per day of natural gas to Unionville and Milan, Missouri, respectively, for resale and distribution in their respective communities and up to 324 Mcf per day of natural gas to Iowa Southern for resale and distribution in the community of Cincinnati, Iowa, all as hereinbefore described and as more fully described in the applications in these proceedings, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve the Applicants, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by the Applicants, to construct and operate approximately 17 miles of 4½-inch O.D. pipeline lateral and to sell and deliver up to 1,867 Mcf per day and 1,592 Mcf per day of natural gas to Unionville and Milan, Missouri, respectively, for resale and distribution in their respective communities and up to 324 Mcf per day of natural gas to Iowa Southern for resale and distribution in the community of Cincinnati, Iowa, all as hereinbefore described and as more fully described in the application.

(B) The Applicants shall be prepared to receive natural gas from Respondent at the proposed new connections within one year from the date of this order.

(C) The authorization granted by paragraph (A) above is conditioned upon Iowa Southern's filing with the Commission proof of the issuance of required authorization from the Iowa Commerce Commission.

(D) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(E) Respondent shall execute and file with the Commission a superseding service agreement with Iowa Southern and service agreements with Unionville and Milan, Missouri, in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WISCONSIN PUBLIC SERVICE CORPORATION AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-283

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 24, 1966)

On March 7, 1966, Wisconsin Public Service Corporation (Applicant) filed in Docket No. CP66-283 an application and supplement thereto on April 13, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the Villages of Coleman and Pound, and the Towns of Beaver and Pound, all in the State of Wisconsin, all as more fully set forth in the application and supplement.

Applicant proposes to construct a gate station, a regulator, 4.6 miles of 4-inch pipeline and appurtenant transmission facilities together with the necessary distribution facilities for the aforementioned communities. Applicant also proposes that Respondent construct approximately 3.3 miles of 4-inch pipeline, pursuant to its "ten-cent formula", extending from its main transmission line in a northwesterly direction to Applicant's proposed gate station.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	23,910	68,840	100,420
Peak day (Mcf)	175	431	627

The total estimated cost of Applicant's proposed transmission and distribution facilities is $271,075, which cost will be financed from internal funds.

Applicant has obtained necessary franchises to supply natural gas in said communities and on August 10, 1965, the Wisconsin Public Service Commission in its Docket No. CA–4526 granted Applicant a certificate to construct and operate the necessary facilities and to sell gas therein.

On April 5, 1966, Michigan Wisconsin filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to extend its facilities, establish connection of its facilities and provide the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 17, 1966 (31 F.R. 4532). No protest, petition to intervene or request for hearing has been filed in this proceeding. The Public Service Commission of Wisconsin filed a notice of intervention on April 11, 1966, stating no hearing was being requested.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–699 (5 FPC 953).

(2) Applicant, Wisconsin Public Service Corporation, a Wisconsin corporation having its principal place of business in Milwaukee, Wisconsin, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to sell and deliver to Applicant, under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 627 Mcf for the Villages of Coleman and Pound and the Towns of Beaver and Pound on a maximum day for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the named communities, and their environs, within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company is directed to sell and deliver to Applicant up to 627 Mcf for the Villages of Coleman and Pound and the Towns of Beaver and Pound on a maximum day under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein one year from the date of issuance of this order.

(D) This order shall be effective upon the issuance of the Commission's order in Docket No. CP66–208, *supra*, p. 777.

OPINION NO. 491

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-196; WISCONSIN GAS COMPANY, DOCKET NOS. CP65-195, CP65-201, CP65-202

OPINION AND ORDER MODIFYING AND ADOPTING EXAMINER'S DECISION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1966)*

Syllabus

1. Commission reviews prescribed formula under which Northern may expand its facilities to provide gas service to new communities. P 792.
2. In testing feasibility of proposed branchlines and determining amount of distributor contribution required, it was correct to use pipeline's new lower rates instead of higher rates in effect at time application was filed. PP. 792, 793, 797.
3. There is nothing here to indicate that use of pipeline's reduced rates to test branchline feasibility will have any detrimental effect on development of future projects. P. 793.
4. Facts and best estimates available, in this instance a known change in rates, must be criteria by which project of this nature is judged. P. 793.
5. Date Northern filed its certificate application does not constitute a cut-off date beyond which adjustments necessary for accuracy could not be made —to do otherwise would violate principle of matching costs and revenues. PP. 793, 798.
6. It is reasonable here to condition Northern's certificate to require refunds of distributor contributions to extent that actual third-year revenues from branchlines exceed projected revenues. PP. 793, 799.
7. Claimed difficulties of refund procedure do not justify rejection of refund condition. P. 794.
8. Required refunds should be related to actual volumes of gas delivered in third year compared with record estimates rather than with third-year revenues. P. 794.
9. Prior Commission holdings on filing of industrial contracts did not rule out possibility that contracts would be required for sales accounting for less than 15 percent of branchline revenues. P. 794.
10. Under circumstances here, signed contracts are required for three sales although they do not exceed 15 percent of the total branchline sales. PP. 794, 801.
11. Examiner properly denied two municipalities permission to participate since petition was untimely filed and never granted. P. 795.
12. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity.

F. Vinson Roach, J. C. Osborne, D. B. O'Brien, John Gale, Justin R. Wolf, Charles A. Case, Jr. and *Stanley Wanger* for the Northern Natural Gas Company.

Ned Willis for North Central Public Service Company and Natural Gas, Inc.

Peyton G. Bowman III and *Richard M. Merriman* for Great Plains Natural Gas Company and Midwest Natural Gas, Inc.

Laverne Kostner for Great Plains Natural Gas Company and Midwest Natural Gas, Inc.

Jacob Goldberg for Natrogas, Inc.

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*Initial decision appears on p. 796.

John F. Gaston for Iowa Electric Light and Power Company.

Albert J. Feigen for American Gas Company of Wisconsin, Inc., the Town of Sabula, Iowa and the Town of Preston, Iowa.

Glen H. Bell for St. Croix Valley Natural Gas Company, Inc.

Eugene O. Gehl and *R. J. Sutherland* for Wisconsin Power & Light Company.

Nicholas J. Lesselyoung and *Robert L. Waldo* for Wisconsin Gas Company.

John W. Kern, III, Cecil A. Beasley, Jr. and *Everett B. Chapman* for City of Viroqua, Wisconsin.

William E. Torkelson and *Clarence B. Sorenson* for Public Service Commission of Wisconsin.

Mark W. Putney for Iowa Power and Light Company.

Edward J. Hartman for Iowa-Illinois Gas and Electric Company.

William J. Grove, Lambert McAllister and *Craig McAllister* for North Star Natural Gas Company and the Town of Waukee, Iowa.

J. F. Kinney and *Ira E. Delk* for Iowa Public Service Company.

A. R. Renquist for Northern States Power Company.

George C. Mastor for Minneapolis Gas Company.

George C. Pardee for Metropolitan Utilities District of Omaha.

Warren K. Dalton for Western Power & Gas Company, Inc.

Thomas M. Knebel for Minn-Dak Fuel Association, Inc.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

John W. Scott and *Louis L. DaPra* for Minnesota Natural Gas Company.

David S. Lichtenstein for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

This is a certificate case, arising under Section 7(c) of the Natural Gas Act, and is before us at this time for decision on exceptions to the initial decision of Presiding Examiner Arthur H. Fribourg, issued February 10, 1966. Northern Natural Gas Company (Northern) seeks a certificate of public convenience and necessity authorizing the construction and operation of approximately 26 miles of 30-inch main line loop and 812 miles of branchlines and related facilities costing $19,305,400, to render initial natural gas service to 131 communities in Iowa, Minnesota, Nebraska, and Wisconsin. The estimated third-year contract demand is 48,137 Mcf per day and third-year sales would be 12,185,837 Mcf. Northern proposes to use its Redfield, Iowa, storage field to supply a portion of the needed volume.

The examiner would grant a certificate to Northern authorizing the facilities and sales proposed. No exceptions have been taken to this finding. We conclude that this determination of the examiner is correct.

The principal issues raised by the exceptions and replies thereto[1] are as follows: (1) How much should Northern's proposed distributing company customers be required to contribute to the costs of the branchlines to establish their economic feasibility and to prevent possible injury to existing customers? (2) Should Northern be required to refund contributions to the distributors in the event the branchlines' actual revenues (or sales) exceed those projected? (3) Should the distributors be required to obtain signed contracts covering large interruptible industrial sales prior to Northern's constructing the branchlines in order to protect against the possible loss of such sales?

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[1] Exceptions were filed on March 2, 1966, by staff; on March 14, 1966, by Northern, Wisconsin Gas Company, Midwest Natural Gas, Inc., Minneapolis Gas Company, American Gas Company of Wisconsin, Inc., St. Croix Valley Natural Gas Company, Inc. and the Towns of Preston and Sabula, Iowa; and on March 21, 1966, by Northern States Power Company. Reply exceptions were on different dates filed by some of the parties listed previously, and were also filed on April 1, 1966, by Northern and the Public Service Commission of Wisconsin; and on April 4, 1966, by Minneapolis Gas Company, Wisconsin Power & Light Company, and Wisconsin Gas Company.

The examiner would require branchline contributions in the amounts specified in his decision and would provide for possible refunds to the extent contributions exceed costs. Finally, he would require that two branchlines serving three industrial customers should not be constructed until the distributing companies obtain signed contracts from the three customers. In general, we conclude that the examiner properly determined each of the substantial issues and, with one minor modification, we affirm the examiner's decision on these issues and reject the parties' exceptions respecting these and other matters.

Branchline feasibility and contributions.—Northern is presently serving the major population centers in its pipeline area, and its remaining unserved markets include many smaller communities requiring branchline investments that are large in relation to sales volumes. Consequently, to establish the economic feasibility of a proposed branchline, and to protect existing customers from having to assume costs which new customers should properly pay, we have prescribed a formula under which Northern may expand its facilities to provide gas service to new communities. The formula provides that the estimated third-year revenues for a town located on a branchline should be equal to or greater than the estimated cost of service, including the cost of gas in the field plus incremental transmission expenses, of that branchline. If the cost of service on a branchline exceeds the estimated revenues generated by the line, the distributing company customer must contribute sufficient funds to defray such costs in order to make the branchline economically feasible. Absent such a contribution, Commission authorization for the branchline will be denied.[2]

In testing the feasibility of Northern's proposed branchlines and determining the amount of contributions required, the examiner used Northern's rates in effect on October 15, 1965, while this proceeding was in progress, as reduced by a settlement in Docket No. RP66–3, instead of using the higher rates in effect when Northern filed its original application. Use of Northern's former higher rates would require distributor contributions of $276,300, while use of the current lower rates would require contributions of $630,917.[3]

Northern, many of its proposed distributing company customers, and the Wisconsin Public Service Commission favor use of the old higher rates on the ground that these rates were used by Northern and the distributors in planning their proposals and determining the amounts of contributions to be made. They argue that to change the basis of their proposals because of a subsequent rate reduction is unfair and would interfere with the orderly development of future projects. They contend that the additional contributions will not materially benefit Northern but will, on the contrary, impose a heavy burden on some of the distributors. Staff and Minneapolis Gas Company favor use of the new reduced rates.

We conclude that the examiner's use of Northern's new reduced rates is correct. The new reduced rates are the actual rates Northern is charging, and their use will provide the most realistic measure of Northern's revenues from its branchlines in the future. There is no merit to the contention of Wisconsin Gas Company that this approach erroneously substitutes new information respecting the "rates" factor in the "equation", while incorrectly assuming that other factors, such as sales, would remain the same. As the examiner noted, the record does not show that the reduction in rates would cause an increase in the distributors' sales, and no party offered to make such a showing by introducing supplementary evidence.

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[2] Commission Opinion No. 324, *Northern Natural Gas Co.*, 22 FPC 164, 172–3 (1959); Opinion No. 404, *id.*, 30 FPC 859, 865 (1963).

[3] The amounts each distributor would pay are listed in Appendix A to the examiner's decision.

Further, there is nothing in the record to indicate that the use of Northern's reduced rates, to test branchline feasibility in order to determine the amount of distributor contributions required, will have any detrimental effect on the development of future projects. The facts and best estimates available, in this instance, a known change in rates, must be selected as the criteria by which a project of this nature will be judged. We agree with the examiner's conclusion that the date Northern filed its certificate application does not constitute a cutoff date beyond which adjustments necessary for accuracy could not be made. This is especially true where the adjustment in rates was made only three days after Northern's direct case was submitted but before the actual hearing in the case. Any other result would violate the principle of matching costs and revenues. In the absence of evidence clearly demonstrating that a substantial adverse impact on future planning will occur by virtue of computing contributions on the basis of Northern's reduced rates, this argument must be rejected.

Refunds of contributions.—The examiner would condition Northern's certificate to require Northern to refund the distributor's contributions to them, to the extent that actual third-year revenues from the branchlines exceed the projected revenues. In the examiner's opinion, such a provision would protect new customers from being charged excessive contributions in the event actual sales exceed estimates and could lessen the burden of basing contributions on Northern's new reduced rates.

The Commission's staff, Northern, and certain distributing companies oppose this refund provision on the grounds, *inter alia*, that it illogically bases the feasibility test not on estimates as to the future, but on results not definitely known until three years after the project is certificated. They contend that such a provision might operate unfairly since it constitutes a "one-way street" that would require refunds where actual revenues exceed projected revenues but would not recoup lost revenues where actual revenues are less. Finally, they argue that it would postpone the final determination of the case, give rise to uncertainty respecting the status of projects and investments and engender conflicts with respect to the proper amounts of refunds.

Conversely, the Wisconsin Public Service Commission and several of the proposed distributing company customers favor the examiner's refund provision. They contend that it is essentially a mathematical adjustment that would further the purpose of the branchline contributions requirement by limiting contributions to covering the risk that the branchlines might not be economically feasible, and no more. The Wisconsin Public Service Commission points out that many distributing companies today apply their own "branchline" rules providing for refunds to their customers of contributions in aid of extensions where revenue from such extensions exceed a specified amount.[4]

We conclude that the condition for refunding contributions is a reasonable one under the circumstances of this case. The provision is in keeping with the purpose of the requirement for branchline contributions, in that it assures that only the minimum contributions necessary to establish feasibility will be required. The claimed difficulties of the refund procedure do not justify its rejection. Initial difficulties attend the use of most new procedures, but progress in improving and refining the administrative process is possible only by attempting the use of new procedures where they appear reasonably likely to succeed.

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[4] *State ex rel. Kennedy, et al.* v. *Public Service Commission*, 42 S.W. 2d 349 (1931), and *Commonwealth ex rel. Green, et al.* v. *Alexandria Water Company*, 65 S.E. 2d 521 (1951).

We conclude, however, that these refunds should be related to the actual volumes of gas delivered in the third year compared with the estimates made on the record,[5] rather than compared with third-year revenues, as the examiner provided. This requirement should avoid some of the uncertainties that would attend the use of revenues, and would relate the amount of refunds more directly to the efforts of the distributors to increase their gas sales.

Industrial contracts.—The examiner recognized that various past Commission decisions involving Northern have required the filing of firm industrial contracts where a contemplated sale appears "to have a strong bearing on the economic feasibility of the project and where there is reason to question whether in fact the sale will be made." [6] In applying this rule in the *Northern* case, Opinion No. 463, the Commission found on the facts there presented that sales which account for more than 15 percent of the projected branchline revenues would have such "strong bearing" on feasibility that contracts would be required for them. However, the Commission did not rule out the possibility that contracts would be required for sales accounting for less than 15 percent of such revenues.

Applying this policy, the examiner held that three signed contracts must be obtained: one for the Wisconsin Co-op Dairy sale, which the Wisconsin Power & Light Company proposed to make from the New Lisbon, Wisconsin, branchline; one for the Twin City Milk Products sale; and one for the River Falls Power Plant sale. The latter two sales are proposed to be made from the Black River Falls branchline, the first by Wisconsin Gas Company, and the second by the St. Croix Valley Natural Gas Company. Although these sales do not exceed 15 percent of total branchline sales, the examiner found signed contracts justified in the light of all the circumstances. We agree. The New Lisbon branchline would become economically infeasible if the Wisconsin Co-op Dairy sale were lost, and the Black River Falls branchline, for which a deficit is already forecast, would be plunged into an even deeper deficit if any sale on the branchline were lost. These and other considerations discussed by the examiner necessitate signed contracts.

This requirement is not onerous since the examiner provided that, alternatively, the distributors on these branchlines could make contributions to the costs of the branchline reflecting the revenue deficiency that would attend loss of these industrial sales, which contributions Northern would refund if the customers sign contracts by the end of the second full year of operations. Such a provision was applied in our Opinion No. 424, *Southern Natural Gas Co.*, 31 FPC 789 (1964), and is equally appropriate in this case. The amounts of the contributions are set forth in Appendix B to the examiner's decision.

The Towns of Preston and Sabula.—The Towns of Preston and Sabula, Iowa, request that Northern be directed to sell to them the volumes of gas Northern proposed to sell to its Peoples Natural Gas Division (Peoples) for resale in the two towns. Preston and Sabula contend that as the result of municipal elections, the towns now plan to install and operate their own gas distribution systems and that the franchises previously granted to Peoples to serve the towns are no longer valid. However, Preston's and Sabula's petition to intervene was filed late and was never granted, and the examiner properly denied them permission to participate in this proceeding or to present any evidence. In view of these facts, there is no basis in the record for granting Preston's and Sabula's requests. However, the towns are at liberty to seek service from Northern in other proceedings. Compare our order amending order accompanying Opinion No. 324, issued February 20, 1962, in *Northern Natural Gas Company*, Docket No. G-17485, *et al.*, 27 FPC 382. If such applications are promptly filed and adequately supported, it appears likely they can be granted in time for service in the coming heating season. Since Northern would have constructed the necessary branchline facilities for Peoples in this case, it may reasonably be required to do so for the two towns if they can show they otherwise meet the requirements of Section 7(a).

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[5] See *Kansas-Nebraska Natural Gas Company, Inc.*, 29 FPC 1058, paragraph B(iii).

[6] See Opinion Nos. 324 and 404, *supra*. See also Opinion No. 463, *Northern Natural Gas Company*, Docket No. CP64-255 (Phase II), 33 FPC 1163 (1965).

We have considered the exceptions to the examiner's decision not discussed herein, but have concluded that they are without substantial support in fact or reasonable basis in law, or are immaterial to decision in this case, and should therefore be denied.

The Commission further finds:

(1) Northern, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as the Commission has heretofore found.

(2) The facilities hereinabove described, as more fully described in Northern's application and the record in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Northern is able and willing properly to do the acts and to perform the service proposed and conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities and the transportation, sale and delivery of natural gas proposed by Northern are required by the public convenience and necessity and a certificate therefor should be issued, as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Northern Natural Gas Company to construct and operate the proposed facilities and to sell and deliver natural gas as hereinabove described, and as more fully described in Northern's application and the record in this proceeding, upon the terms and conditions of this order.

(B) Northern's certificate, and the rights granted thereunder, are subject to the condition that Northern shall comply with all applicable provisions of the Commission's Regulations under the Natural Gas Act and specifically with paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations. The time within which Northern's facilities shall be completed and in actual operation in conformity with Section 157.20(b) shall be 12 months from the date of issuance of this opinion.

(C) Northern's certificate, and the rights granted thereunder, are subject to the further condition that no construction shall commence on any branchline unless and until each distributor whose name is listed in Appendix A to the examiner's decision shall have paid Northern the amount set opposite the distributor's name with respect to that branchline. In the event that actual volumes of sales on any branchline in the third full calendar year of operation exceed the projected total for that branchline, as reflected in Appendix A, Northern within 60 days thereafter shall submit for the Commission's approval a plan for refunding all or part of any payments required by this paragraph, so as to conform to actual experience. Such refunds shall be determined by utilizing the same factors employed in the formula used in this case, except that volumes of sales (both contract demand and annual volume) made at the time such refunds are determined shall be used.

(D) Northern's certificate, and the rights granted thereunder, are subject to the further condition that construction of the New Lisbon, Wisconsin, branchline shall not commence unless and until the Wisconsin Co-op Dairy shall have signed a contract for the purchase of natural gas from a distributor on this line or, alternatively, unless and until each distributor on this line shall have paid Northern the amount set opposite its name in Appendix B to the examiner's decision with respect to that branchline. Said payments shall be promptly refunded by Northern if the contract is signed at any time before the end of the second full calendar year of the operation of that branchline.

(E) Northern's certificate, and the rights granted thereunder, are subject to the further condition that construction of the Black River Falls, Wisconsin, branchline shall not commence unless and until the Twin City Milk Products Co. and the River Falls Power Plant have contracted to purchase natural gas from a distributor on this line or, alternatively, unless and until each distributor shall have paid Northern the amount set opposite its name in Appendix B to the examiner's decision with respect to Twin City Milk Products if Twin City Milk Products does not sign such a contract, and the amount set opposite its name with respect to the River Falls Power Plant if no contract is signed for that sale. Payments made with respect to either of these contracts shall be promptly refunded by Northern if the contract is signed at any time before the end of the second full calendar year of operation of the Black River Falls branchline.

(F) The initial decision of the presiding examiner issued herein on February 10, 1966, is to the extent consistent with this opinion hereby adopted by the Commission as of the date of issuance of this opinion, to constitute with this opinion the Commission's decision in this case.

(G) Except to the extent herein granted, the exceptions filed to the presiding examiner's decision are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER GRANTING CONDITIONED CERTIFICATE UNDER SECTION 7 OF THE NATURAL GAS ACT

(Issued February 10, 1966)

FRIBOURG, *Presiding Examiner*: Northern Natural Gas Company seeks authorization to build and operate $19,305,400 of facilities to bring natural gas service to 131 Iowa, Minnesota, Nebraska and Wisconsin communities which do not now have it.[1] The estimated third year contract demand is 48,137 Mcf and third year sales are estimated at 12,185,837 Mcf.

Northern proposes to construct some 26 miles of 30-inch mainline loop, 812 miles of branch lines, and various measuring and compressor facilities. It proposes also to use its Redfield, Iowa, storage field to supply the increase of 8,580 Mcf per day of contract demand between the second and third years of service. No additional facilities are needed for that purpose.

The record shows, and it is undisputed, that the project presents no problem as to design, location, financing, gas reserves, storage facilities, cost, or, except as noted below, markets and economic feasibility. The disputed issues relate to contributions to be required from certain of the distributors to whom Northern will sell. Northern determined that contributions of $276,300 should be made in aid of the construction of five branch lines. The Commission staff argues for contributions of $630,917 on eleven branch lines, provided that before construction begins signed contracts are obtained by the distributors from three industrial customers. If these contracts are not signed, the Staff would require a total of $940,749 of contributions from the distributors.

Branch-Line Feasibility

(a) *Rates*

Northern's application was filed December 31, 1964, and amended April 19, 1965. Subsequently, on October 15, 1965, 34 FPC 1162, this Commission approved a reduction in Northern's rates effective as of June 27, 1965 (Docket No. RP66–3). As the feasibility of the various branch lines is determined on the basis of estimated revenues in the third year of operation, and as the revenue estimates are based upon the application of Northern's rates to the volumes of gas estimated to be sold in that year, the choice of which rate to apply bears directly on feasibility. In this instance, to use the former higher rates, as Northern would do, would result in the requirement of $276,300 of contributions, while application of the current rates, as urged by the Staff, would require $630,917 of contributions, disregarding for the moment the matter of contracts to be signed with three industrial customers.

Those who would use the old rates to determine probable third-year revenues argue that the distributors have relied upon Northern's calculation of contributions, which was based on the old rates, that it would be unfair to penalize the distributors for the Commission's not having issued a certificate before the rate reduction, that the additional contributions would be a severe burden on some distributors but would be *de minimis* to Northern in relation to the size of the project, that there must be a cut-off date as of which the determination of feasibility should be made and that to avoid uncertainty the cut-off date should not be later than the filing of the application.

The Examiner disagrees. He finds and concludes that the reduced rates should serve as the basis for determining contributions. The considerations governing the determination of contributions to a pipeline are not unlike those governing a pipeline rate case. In both, it is necessary to provide a fair return to the pipeline. In a rate case this is achieved by changing the amount of revenues to be earned on a given rate base. In a contribution case the estimated revenues are a given figure but the rate base (*i.e.*, the pipeline's investment in the project) is reduced to one on which the estimated revenues will provide an adequate return. It is familiar procedure in a rate case to take some past year as a test year and adjust it for known changes which will operate in the future. In a contribution case the "test year" is necessarily in the future and is ordinarily the third full year of operation. In the present instance we have a known change in rates. The new rates are the best showing of what rates will be then. The estimates for that year should reflect them, just as, in a rate case, the test year figures would be adjusted to reflect a known change in the pipeline's cost of gas, or any other cost.

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[1] With respect to certain of the communities in Wisconsin, the Wisconsin Gas Co., formerly Milwaukee Gas Light Co., is applying for an order requiring Northern to construct transmission facilities. The Wisconsin Gas Co., application, in effect, duplicates Northern's as to those communities.

The filing date of an application cannot be considered a cut-off date beyond which the Commission is relieved of the necessity for making its estimates as accurate as is reasonably possible. The mandate of Section 7(e) of the Natural Gas Act directs the Commission to issue a certificate if the project

> * * * is or will be required by the present or future public convenience and necessity * * *

The statute is not tolled by the filing of an application. The Commission speaks as of the date of its order.

The parties cannot complain that they have not been given opportunity to be heard on the effect of the rate cut. Some argued that the rate cut would cause a sales increase, and that it would therefore be unfair to take one into account and not the other. However, the record does not show that the rates of the distributors to whom Northern would sell have been or will be reduced. The cut consisted entirely of a reduction in Northern's demand charge and even on a 100 percent load factor would come to less than one cent per Mcf. There is no showing that a cut of this size, confined to Northern's demand charge alone, would lead to any appreciable sales growth among its customers. Some distributors, such as Iowa Electric Light & Power Co. in its counsel's opening statement, argued that they have become aware of additional potential customers since they made their market estimates. However, not one distributor offered to revise its market estimate, nor did the pipeline. Be that as it may, it is believed that the order made hereinafter adequately protects the distributors on branches where the estimates turn out to have been too low.

The public interest requires protection of both the pipeline and the distributors. The pipeline must be given reasonable assurance that a project will yield an adequate return, because if it does not, an unwarrantable burden may be thrown upon its other customers. On the other hand, if the distributors make contributions which turn out to be too large, they will in effect be paying more for their gas than they should. The Commission does not require that project revenues must yield a return comparable to that allowed on the existing system operations, but encourages the construction of branch lines wherever possible, provided that no undue burden is placed on existing customers. *East Tennessee Natural Gas Co.*, 32 FPC 158, 161; *Southern Natural Gas Co.*, 31 FPC 789, 796.

In the instant case, the third-year revenues of the project, based on current rates, would give Northern a return of 5.7 percent on its net investment in the new facilities. This takes into consideration only the contributions that Northern would require, not the additional ones proposed by Staff. In Opinion No. 324, *Northern Natural Gas Co.*, 22 FPC 164, 172-3, the Commission stated, with reference to the major extension then under consideration, that third-year revenues should be at least sufficient to cover the branch-line cost of service including an adequate rate of return, and that Northern's branch-line extension policy should be fixed accordingly. In Opinion No. 342, *Northern Natural Gas Co.*, 25 FPC 431, 433, Northern's rate of return was fixed at 6¼ percent, which figure has been used in the present case in the determination of the incremental cost of service.

This rate of return will be earned on Northern's net proposed branch-line investment only. That is, after deducting the payments required by this order from total branch-line investment, each branch would earn the 6¼ percent rate of return fixed in Opinion No. 342, and some of them would contribute something towards main-line costs. The return on the $14.9 million of branch-line facilities is adequate by Opinion No. 324 standards, since that opinion is directed towards return on branch lines, but it must be understood that Northern's return on its $19.4 million[2] over-all investment, less the $631,000 of payments to it which this order requires, is only 5.8 percent.

The danger in this sort of expansion is, of course, that it tends to burden existing customers with facilities on which an inadequate rate of return is earned. So viewed, this project is on the verge of infeasibility. The Staff may find it appropriate in future cases to take into consideration the over-all return, including main-line facilities, so that a policy may be formed for general use as the less lucrative markets are increasingly developed.

On the present record the danger is not serious enough to warrant denial of the project. The contemplated investment is not large enough to pose a threat to the stability of Northern's rates. (The projects considered in Opinion No. 324, for instance, were some five times as large, and the present project will form only a small part of Northern's total assets.) Nevertheless, the policy of Opinion No. 324 and other Commission opinions requiring branch lines to return something over their incremental costs is a good one and should be heeded.

Developments since its issuance give added reason for heeding it. On October 14, 1965, the Commission issued Opinion No. 479, *Northern Natural Gas Co.*, 34 FPC 1139, in which it authorized reductions in the contract demands fixed in Opinion No. 324 for five towns in Iowa. Although the burden on other customers as a result of the reduction was held not to be significant, the opinion showed that Northern has granted numerous reductions in its customers' contract demands (p. 1141). Regardless of the reasons for these reductions, the fact that they were found necessary emphasizes the need for care in protecting all customers in the present case, or any other case where the question of economic feasibility is a close one.

Protection of customers is not necessarily assured by requiring contributions in amounts sufficient to give the pipeline an adequate return. The new customers must be considered as well as the old ones. Obviously, if the contributions turn out to have been excessive, those who make them will have been overcharged. The burden imposed on some of the small distributors by the contributions suggested by the Staff is considerable. They, too, are entitled to protection should the burden turn out to be unnecessary.

The order will therefore provide that the certificate granted to Northern be conditioned upon payment by the respective distributors of the amounts, totalling $630,917, set opposite their names in Appendix A annexed to this decision. Each payment, however, is to be refunded in whole or in part after the third year if the actual third-year revenues from the lateral to which the payment applies exceed the revenues now projected for that lateral. The precise amounts of refunds are left for future determination, but it is intended that an excess sufficient to eliminate the projected deficiency on any lateral would result in a full refund by Northern of the payments made with respect to that lateral.

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[2] In addition to the $19.3 million of construction Northern proposes to acquire from its Peoples Division for $110,000 a line known as the Fredericksburg, Iowa, line.

This would still leave some laterals contributing nothing to main-line costs and, if actual revenues run below the estimates, might leave some of them with revenues less than the incremental cost of service. However, the prospect of a refund may stimulate distributors on the deficit laterals to promote sales. Much may depend on how energetic a sales campaign is conducted. *Cf. East Tennessee Natural Gas Co.*, Opinion No. 435, 32 FPC 158, 161. If, for whatever reason, the estimates prove to be accurate or understated, each lateral would at least cover its incremental costs and the project as a whole would contribute something to main-line costs.

This disposition answers the claims that because the lower rates will produce more sales the market estimates should be revised upward. To the extent that the market estimates are exceeded, the required payments will be refunded. The requirements will ultimately be governed not by the estimates but by the facts as they develop. The method is self-correcting.

(b) *Market Estimates*

Minneapolis Gas Company argues that with respect to three of Northern's distributors there have been overestimates of the percentage of potential customers who will be attached during the third year. It claims that Great Plains Natural Gas Company, Midwest Natural Gas Company and Wisconsin Gas Company did not use their own historical experience or Northern's most recent experience in estimating this third-year meter saturation.[3] By using Northern's earlier meter saturation data, reflecting the experience of communities attached to Northern's line since 1950, these distributors are said to have overstated their expected demand.

The saturation figures based on communities attached since 1950 show slightly higher saturation in the smallest communities, substantially the same in the next larger ones, and lower in the largest communities, than do the figures for communities attached from 1959 through 1961. The Examiner has compared the results reached by the two methods and finds only insignificant differences. It is concluded that the saturation figures which Northern presents are reasonable.

Minneapolis Gas Company further objects to the use of the estimate that Great Plains will sell 1,535,000 Mcf to Northern States Power Company's Granite Falls plant on the Marshall, Minn. lateral, in the third year of service. It points out that actual fuel requirements of the plant have been less than that in recent years and that a decline is expected after the third year, so that ninth year sales are estimated at only 900,000 Mcf.

In the first place, an estimate based on this plant's estimated ninth year take, leaving the other sales estimates on this branch line unchanged, suffers from the implicit assumption that the other markets on the line will not develop during the fourth to ninth years. Second, the Marshall lateral shows the largest excess of revenues over costs of any of the proposed laterals. If the costs and revenues of this line were reduced to reflect sales of only 900,000 Mcf to the Granite Falls plant, the lateral would still make a substantial contribution to main line costs. Not even Minneapolis Gas Company requests any finding of infeasibility with respect to this lateral.

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[3] Minneapolis Gas attempts to bolster its claims of infeasibility by presenting, in its brief, evidence that is not a part of this record. Wisconsin Gas Company's objection to this tactic is well taken.

(c) *Contracts with Industrials*

The Staff would condition the certificate as to two of the proposed branch lines upon the obtaining of contracts by the distributors with three of their large industrial customers, or alternatively upon the payment of contributions by those distributors. It would require Wisconsin Power & Light Co. to obtain a commitment from the Wisconsin Co-op. Dairy before the New Lisbon, Wis., line is constructed, or else require a $65,697 contribution from Wisconsin Power & Light Co. and Elroy Gas Co., who are the distributors to be served by that line. Similarly, it would require a $244,135 contribution from the distributors on the Black River Falls, Wis., line unless before construction Wisconsin Gas Co. obtains a contract from Twin City Milk Products and St. Croix Valley Natural Gas Co. obtains one from the River Falls Power Plant. This Black River Falls contribution would be in addition to a $239,318 contribution payment with respect to that line resulting from the deficiency of revenues against costs at Northern's current rates, assuming that the two contracts were signed.

The Staff originally would have required ten signed contracts (or, alternatively, contributions). During the hearing, however, seven of the customers signed up, leaving only the three mentioned above.

The requirement of signed contracts is discussed in several Commission opinions, notably No. 324, *Northern Natural Gas Co.*, 22 FPC 164; No. 404, *Northern Natural Gas Co.*, 30 FPC 859; No. 424, *Southern Natural Gas Co.*, 31 FPC 789; No. 435, *East Tennessee Natural Gas Co.*, 32 FPC 158; No. 463, *Northern Natural Gas Co.*, 33 FPC 1163, June 2, 1965; and No. 469, *Midwestern Gas Transmission Co.*, 34 FPC 457, August 10, 1965, among others. In general, the Commission has required firm commitments where the contemplated sales are large in relation to total estimated third-year sales on the branch-line, and where the feasibility of the line depended on the sale. The Staff takes a prospective sale of 100,000 Mcf or 15 percent of total projected sales on a branch-line as the point above which a contribution should be required, if loss of the customer would cause revenues from the line to drop below costs.

Various arguments are advanced against the Staff's proposal. It is argued that the three sales for which the Staff would require contracts have no strong bearing on economic feasibility. In support of this, it is pointed out that the two sales on the Black River Falls lateral would contribute only 3 percent and 2.6 percent of projected revenues. It it also argued that the record shows that there is every probability that all three of these customers will sign up, and that Commission policy has been not to require contracts in such a situation. Another argument is that to obtain contracts in advance of construction is contrary to established industry practice[4] and that to require them would put the distributor in a poor bargaining position with the prospective customer. Furthermore, the required contribution, if contracts cannot be obtained, is said to place a heavy burden on the small distributor.

The Commission's requirements as to what precautions are needed to protect economic feasibility have not been rigid. They show a case-by-case treatment which has not hardened into rule. That course of action is reasonable: precautions needed where feasibility is questionable may safely be discarded where the margin is wide.

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[4] This argument is supported by language in the Commission's opinion in *Kansas Pipe Line & Gas Co.*, 2 FPC 29, 45.

The Black River Falls lateral will fail by a substantial margin to cover its incremental costs even if the two large potential industrial customers now unsigned make purchases in the amounts forecast. In that situation the loss of any prospective customer anywhere on the lateral would plunge the entire branch deeper into deficit.

In a sense, therefore, every prospective customer has a strong bearing on the feasibility of the line. Yet it is impractical and undesirable to attempt to sign up every customer. Failure of a few small customers to sign could not seriously impair feasibility, since the possibilities for replacement are substantial. Among the large customers this tends to be less true. Twin City Milk Products, the River Falls Power Plant and the Wisconsin Co-op. Dairy are less readily replaceable than smaller consumers.

The Staff would not require signed contracts from large customers who are on lines that would be feasible without them. Some 300 industrial sales are involved in the proposed expansion. The requirement of a signed contract is applied to only ten of them, and of those ten, seven have now signed. The requirement of ten out of 300, where infeasibility would result or would be increased by the loss of any of the ten, is a not unreasonable safeguard. The fact that seven have already signed shows it to be a not impractical one. The "established practice" of the industry, relied on by some who oppose the requirement, is evidently not so firmly established as to be inflexible.

The probability that the three prospective customers will sign is, in the Examiner's opinion, fairly well established. However, the provisions of this order make that probability less important. The order will provide that the payments must be made in the amounts the Staff would require, but that they are to be refunded if the customers sign contracts by the end of the second full year of operation.

This again is a matter of letting the facts govern the policy. If the contracts are obtained, the distributors will get their money back. If they are not obtained, the payments will have been needed to avoid or reduce the deficit expected without them. A prospective customer who has not signed up by the end of the second full year cannot be expected to contribute the estimated amount towards third-year revenues. The Staff's proposal of nonrefundable contributions entails the risk that the distributors will obtain the customers after the money has been paid. This would leave the distributors out of pocket by reason of a contingency that failed to materialize and would, in effect, result in their paying too much for their gas supplies. It is fairer to let their ultimate liability depend on the event.

This procedure takes much force out of the claim that to require a signed contract would leave the seller in a poor bargaining position. The threat that an industrial, by refusing to sign, could prevent the branch from being built would be gone. Only by waiting two years or more to sign a contract could the prospective customer put the distributor's payment to Northern beyond hope of refund. During that time he would be giving up the benefits of the contract. If the contract is profitable to him, the tendency would be to sign. If his signature cannot be obtained even through the gas is flowing past his door, it is a good indication that the sale should not have been included in the market estimate in the first place, and Northern should be protected to the extent of the required payment.

It is therefore provided that in addition to the $630,917 of payments referred to earlier, $65,697 be paid to Northern by the distributors on the New Lisbon, Wis., line unless before construction begins a contract is signed with Wisconsin Co-op. Dairy, and that $244,135 be paid by the distributors on the Black

River Falls, Wisconsin, line if before construction begins no contracts are signed for the sales to either Twin City Milk Products or the River Falls Power Plant. Of this, $129,473 is attributable to Twin City Milk Products and is to be paid if no contract is signed with that entity, and the remaining $114,662 to the power plant and shall be paid if no contract is signed as to it. If, after the commencement of construction and before the end of the second full calendar year of operation any one or more of the three contracts is signed, the distributor will immediately inform Northern, which will thereupon return the payments made in respect to that sale. After the end of the second year, the payments will not be subject to refund.

What is done here is not new. The Commission made similar provisions in the ordering portion of its Opinion No. 424, *Southern Natural Gas Co.*, 31 FPC 789, 799. This order follows that one.

Northern States Power Company (N.S.P.) is required by this order to make a payment of $19,436 by reason of the deficit which results from the non-inclusion of a potential sale to St. John's University in the market estimate relating to the St. Joseph, Minnesota, branch-line. N.S.P., which is the only distributor on that line, asks that if a contract is obtained before construction, the payment not be required.

The market estimates on which the contributions are based and which form an important part of the foundation for issuance of the certificate do not include this sale which, though originally included, was deleted by Northern Natural's witness.

The effect of granting N.S.P.'s request would be to include N.S.P.'s payment among those listed in Appendix B. That group, however, includes only prospective customers whose prospective purchases are included in the market estimates. It is intended to safeguard Northern in the event that an expected large contract does not materialize. To treat this branch consistently with the others, *i.e.*, to base its treatment, as in the other cases, on Northern Natural's markets estimates, the payment should be required. This payment, like the others provided for in Appendix A, will be refundable to the extent that actual third-year revenues from the branch-line suffice to wipe out the estimated third-year deficit.

In urging that it not be required to make a payment if in fact it obtains a contract prior to construction, N.S.P. is making a request that could be made by any other distributor who, before construction, obtains a contract from a customer not included in the market estimates. It would be impracticable to readjust the payments for every such event that may occur. Furthermore, the present disposition puts N.S.P. in a better position if a contract is signed after construction begins than it would be if its request were granted as made. The burden of leaving this amount of money with Northern until after the third year of operation is a negligible one for N.S.P.

Allocation of Payments

Wisconsin Gas Co. objects to the allocation of payments to distributors in proportion to their shares of the projected third-year revenues on the branch line involved. This intervenor does not offer a formula of its own but argues that the revenue-basis approach is inequitable and urges that a different method be used.

The revenue method, it says, requires distributors with adequate markets near the main pipeline to finance remote communities which, if they were considered individually, could not support branch-line extensions. It argues that a branch-line which more than covers its incremental costs is not required to support deficient ones, and similarly a distributor with a profitable market should not be required to make a contribution to open up an unprofitable one merely because both happen to be supplied from the same lateral.

It is difficult, however, to suggest a more equitable arrangement which is also practicable. To assess contributions on the basis of distance from the main line is not the answer. That would lead to some sort of "Mcf-mile" (or possibly "Mcf-yard"!) formula which carries its own inequities and would be intolerably cumbersome. Third-year revenues from the distributors are at least an approximate measure of the benefits with which the pipeline will supply them. The pipeline may derive varying rates of return from different customers, but the various parts of a utility system need not and cannot be equally profitable. *Minneapolis Gas Co.* v. *F.P.C.*, 278 F. 2d 870, 871, certiorari denied, 364 U.S. 891.

The third-year revenues method is acceptable to Northern, to the Staff and to the large majority of the distributors involved. Long usage sanctions it. It has its defects, but it is a reasonable measure of the benefits. No better method is suggested, nor has the Examiner been able to devise one. He therefore accepts it.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence and the briefs of the participants, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The applicant Northern Natural Gas Company is engaged in the transportation of natural gas in interstate commerce and in the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities of the applicant as more fully set forth in its application and the evidence of record in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by the applicant are subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) The applicant is able and willing to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act as amended and to the rules, regulations and orders of the Commission thereunder.

(4) Subject to the conditions hereinafter stated, the construction and operation of the proposed facilities and the proposed deliveries of natural gas by applicant are required by the public convenience and necessity and a certificate therefor so conditioned should be issued.

ORDER

WHEREFORE, *It is ordered*, that a certificate of public convenience and necessity be and the same hereby is issued authorizing applicant to make the sales and construct and operate the proposed facilities as hereinbefore described, on condition that:

(A) No construction shall commence on any branch line unless and until each distributor whose name is listed in Appendix A hereto annexed shall have paid Northern the amount set opposite the distributor's name with respect to that branch line. In the event that actual revenues on any branch line in the third full calendar year of operation exceed the projected total for that branch line as shown in Appendix A, Northern within 60 days thereafter shall submit for the Commission's approval a plan for refunding all or part of any payments required by this paragraph, so as to conform to actual experience.

(B) Additionally, it is ordered that construction of the New Lisbon, Wisconsin, branch line shall not commence unless and until the Wisconsin Co-op. Dairy shall have signed a contract for the purchase of natural gas from a distributor on this line or, alternatively, unless and until each distributor on this line shall have paid Northern the amount set opposite its name in Appendix B with respect to that branch line. Said payments shall be promptly refunded by Northern if the contract is signed at any time before the end of the second full calendar year of the operation of that branch line.

(C) It is further ordered that construction of the Black River Falls, Wis., branch line shall not commence unless and until the Twin City Milk Products Co., and the River Falls Power Plant have contracted to purchase natural gas from a distributor on this line or, alternatively, unless and until each distributor shall have paid Northern the amount set opposite its name in Appendix B with respect to Twin City Milk Products if Twin City Milk Products does not sign such a contract, and the amount set opposite its name with respect to the River Falls Power Plant if no contract is signed for that sale. Payments made with respect to either of these contracts shall be promptly refunded by Northern if the contract is signed at any time before the end of the second full calendar year of operation of the Black River Falls branch line.

ARTHUR H. FRIBOURG,
Presiding Examiner.

APPENDIX A

DOCKET NO. CP65-196, ET AL.

PAYMENTS BY DISTRIBUTORS BASED UPON APPLICANT'S MARKET ESTIMATES

Branch Line	Estimated third year revenue	Distributor	Payment
Arlington, Wis.	$125,231	WP&L	$252,248
Black River Falls, Wis.	345,131	AGC	72,059
	309,703	MNG	64,688
	230,971	MGL	48,246
	48,942	NG	10,219
	211,184	St. Croix	44,106
			239,318
Callender, Iowa	13,062	IIG&E	8,986
Central City, Iowa	62,926	IEL&P	44,398
Minburn, Iowa	9,725	IP&L	15,850
Onawa, Iowa	75,592	IPS	10,836
	65,590	PNGD	9,399
			20,235
			20,235
St. Joseph, Minn.	41,022	NSP	19,436
Star Prairie, Wis.	11,180	MGL	2,698
Stratford, Iowa	18,832	IEL&P	2,954
Union, Iowa	21,395	IEL&P	5,521
Watertown, Minn.	75,503	Natrogas	15,677
	17,320	MGC	3,596
			19,273
			630,917

APPENDIX B

DOCKET NO. CP65–196, ET AL.

ADDITIONAL PAYMENTS BY DISTRIBUTORS IN THE ABSENCE OF CERTAIN CONTRACTS

New Lisbon, Wis. Branch Line

Estimated Third Year Revenues	Distributor	Payment (re Wisconsin Co-op. sale)
$32,901	EG	$9,655
190,977	WP&L	56,042
		65,697

Black River Falls, Wis. Branch Line

Estimated Third Year Revenues	Distributor	Payment		
		Total	Twin City [1] (53.0336%)	River Falls [1] (46.9664%)
$345,131	AGC	$77,908	41,317	36,591
309,703	MNG	69,910	37,076	32,834
196,811	MGL	44,427	23,561	20,866
48,942	NG	11,048	5,859	5,189
180,932	St. Croix	40,842	21,660	19,182
		244,135	129,473	114,662

[1] Revenue estimate for Twin City sale	$34,160	53.0336%
Revenue estimate for River Falls sale	30,252	46.9664%
	64,412	100.0000%

NAMES OF DISTRIBUTORS AND ABBREVIATIONS

American Gas Company	AGC
Elroy Gas, Inc	EG
Iowa Electric Light and Power Company.	IEL&P
Iowa-Illinois Gas & Electric Company	IIG&E
Iowa Power and Light Company	IP&L
Iowa Public Service Company	IPS
Midwest Natural Gas, Inc	MNG
Milwaukee Gas Light Company	MGL
Minneapolis Gas Company	MGC
Natrogas, Inc	Natrogas
Natural Gas, Inc	NG
Northern States Power Company	NSP
Peoples Natural Gas Division of Northern.	PNGD
St. Croix Valley Natural Gas Company.	St. Croix
Wisconsin Power and Light Company	WP&L

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66–24

ORDER DESIGNATING ADDITIONAL RESPONDENTS

(Issued May 25, 1966)

The Commission, by order issued April 13, 1966, 35 FPC 497, severed the Pipeline Production issue from the Hugoton–Anadarko Area Rate Proceeding Docket No. AR64–1, *et al.*, and instituted a new proceeding in the above-identified docket for the purposes of determining the proper method for pricing, as a component of the overall cost-of-service of the purchasing pipeline, natural gas produced by the pipelines or acquired by them from their affiliated producer companies.

In Appendix A to our order of April 13, 1966 we named various pipeline companies as parties-respondent to the newly instituted proceeding. Since this proceeding encompasses the issue of the appropriate method of pricing to be applied to natural gas acquired by pipelines from their affiliated producer companies we conclude upon further consideration that it is appropriate to join as parties-respondent the affiliated producer companies hereinafter named.

Accordingly, the Commission believes that it is in the public interest to amend Appendix A to the April 13 order to include the following affiliated producer companies: Anadarko Production Company, Cities Service Oil Company, Colorado Oil and Gas Company, Columbian Fuel Corporation, El Paso Natural Gas Products Company, La Gloria Oil and Gas Company, Lone Star Producing Company, The Preston Oil Company, Tenneco Oil Company, Texas Gas Company, Texas Gas Exploration Corporation, and Union Producing Company. This list of affiliated producer companies may not necessarily be all-inclusive; there may be other existing affiliated producer companies which may be brought to the Commission's attention during the course of this proceeding.

Additionally, we are amending Appendix A to the aforementioned order to include Iroquois Gas Company, United Natural Gas Company, Pennsylvania Gas Company, as parties-respondent pipeline companies to this proceeding.

The Commission orders:

Appendix A of the Commission's order in this docket issued April 13, 1966, is hereby amended to include the following companies as parties-respondent in the proceedings instituted by paragraph (B) of that order: Anadarko Production Company, Cities Service Oil Company, Colorado Oil and Gas Company, Columbian Fuel Corporation, El Paso Natural Gas Products Company, La Gloria Oil and Gas Company, Lone Star Producing Company, The Preston Oil Company, Tenneco Oil Company, Texas Gas Exploration Corporation, Union Producing Company, Iroquois Gas Company, United Natural Gas Company, and Pennsylvania Gas Company.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66-24

ORDER PERMITTING AND DENYING INTERVENTIONS

(Issued May 25, 1966)

Pursuant to the Commission's order issued April 13, 1966, 35 FPC 497, instituting the "Pipeline Production Area Rate Proceeding, Docket No. RP66-24," timely petitions and notices to intervene were filed by the persons named in the following intervener categories:

I. The following state commissions filed notices of intervention under Section 1.8 of our Rules of Practice and Procedure:

Iowa State Commerce Commission (April 29, 1966).
Michigan Public Service Commission (May 3, 1966).
Mississippi Public Service Commission (April 25, 1966).
Public Service Commission of the State of New York (April 27, 1966).
Public Service Commission of Wisconsin (April 28, 1966).
State Corporation Commission of the State of Kansas (April 27, 1966).

The People of the State of California and the Public Utilities Commission of the State of California (May 2, 1966).

The Public Utilities Commission of Ohio (May 2, 1966).

II. State, county, and municipal governmental bodies filing petitions to intervene:

State of Wisconsin (May 2, 1966).

City of Chicago (April 28, 1966).

City and County of Denver, Colorado (May 2, 1966).

City of Los Angeles (April 29, 1966).

City and County of San Francisco (May 2, 1966).

City Group Gas Defense Association consisting of the Kansas Cities of Altamont, Atchison, Chanute, Countryside, Erie, Fairway, Girard, Grenola, Howard, Iola, Leavenworth, Neodesha, and Prairie Village; and the Missouri Cities of Aurora, Carl Junction, Carthage, Independence, Joplin, Kansas City, Marshall, Monett, Mt. Vernon, Neosho, Nevada, Oronogo, St. Joseph, Springfield, Waverly, and Webb City (May 2, 1966).

III. Natural gas distribution companies, natural gas distribution company associations, natural gas producers and association of natural gas producers filing petitions to intervene:

Atlanta Gas Light Company (May 2, 1966).

American Public Gas Association consisting of gas distributors within the States of Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Washington (May 2, 1966).

The Berkshire Gas Company (May 2, 1966).
  Boston Gas Company
  The Bridgeport Gas Company
  Bristol and Warren Gas Company
  Brockton Taunton Gas Company
  Buzzards Bay Gas Company
  Cambridge Gas Company
  Central Massachusetts Gas Company
  Concord Natural Gas Corporation
  The Connecticut Gas Company
  Fall River Gas Company
  Fitchburg Gas and Electric Light Company
  Gas Service, Inc
  The Greenwich Gas Company
  The Hartford Electric Light Company
  Haverhill Gas Company
  City of Holyoke, Massachusetts Gas and Electric Department
  Lawrence Gas Company
  Lowell Gas Company
  Lynn Gas Company
  Manchester Gas Company
  Mystic Valley Gas Company
  New Bedford Gas and Edison Light Company
  The New Britain Gas Light Company
  New Haven Gas Company

- The Newport Gas Light Company
- North Attleboro Gas Company
- Northampton Gas Light Company
- North Shore Gas Company
- City of Norwich, Department of Public Utilities
- Norwood Gas Company
- The Pequot Gas Company
- Providence Gas Company
- South County Gas Company
- Hartford Gas Company
- Springfield Gas Light Company
- Tiverton Gas Company
- Valley Gas Company
- Wachusett Gas Company
- City of Westfield Gas and Electric Light Department
- Worcester Gas Light Company

The Brooklyn Union Gas Company (April 29, 1966).
Central Hudson Gas & Electric Corporation (May 2, 1966).
Central Illinois Light Company (May 2, 1966).
Central Illinois Public Service Company (May 2, 1966).
Consolidated Edison Company of New York, Inc. (April 29, 1966).
Gulf Oil Corporation (May 2, 1966).

- Amerada Petroleum Corporation
- The Atlantic Refining Company
- Continental Oil Company
- Kerr-McGee Corporation
- Marathon Oil Company
- Pan American Petroleum Corporation
- Phillips Petroleum Company
- Shell Oil Company
- Sinclair Oil & Gas Company
- Skelly Oil Company
- Warren Petroleum Corporation

Humble Oil & Refining Company (May 2, 1966).
Hunt Oil Company (May 5, 1966).
Illinois Power Company (May 2, 1966).
Iowa Electric Light and Power Company (May 2, 1966).
Iowa Public Service Company (May 2, 1966).
Long Island Lighting Company (April 27, 1966).
Memphis Light, Gas and Water Division (May 2, 1966).
Metropolitan Utilities District of Omaha (May 2, 1966).
Michigan Gas Utilities Company (April 26, 1966).
Minnesota Natural Gas Company (April 28, 1966).
Mississippi Valley Gas Company (April 29, 1966).
Niagara Mohawk Power Corporation (April 29, 1966).
Northern Illinois Gas Company (May 2, 1966).
Northern Natural Gas Producing Company (May 2, 1966).
Orange and Rockland Utilities, Inc. (May 2, 1966).
Pacific Gas and Electric Company (May 2, 1966).
Pacific Lighting Service and Supply Company, Southern California Gas Company, and Southern Counties Gas Company of California (May 2, 1966).
Philadelphia Electric Company (May 2, 1966).

Philadelphia Gas Works Division of The United Gas Improvement Company (April 28, 1966).
Public Service Company of Colorado (May 4, 1966).
Public Service Electric and Gas Company (April 25, 1966).
San Diego Gas & Electric Company (April 29, 1966).
Socony Mobil Oil Company, Inc. (May 2, 1966).
Sun Oil Company (May 2, 1966).
Superior Oil Company (May 2, 1966).
Wisconsin Gas Company (May 2, 1966).
Texas Independent Producers & Royalty Owners Association (April 27, 1966).
Texaco Inc. (May 2, 1966).
Washington Gas Light Company (May 2, 1966).
Willmut Gas and Oil Company (May 2, 1966).

In addition, The Pipeline Division, Independent Natural Gas Association of America (INGAA), a recognized trade organization which includes representatives of most of the large natural gas transmission companies subject to the Commission's jurisdiction, has filed a petition to intervene. Since INGAA's Pipeline Division participation will be that of an industry trade association, we shall grant intervention while recognizing that many of the Pipeline Division members are presently respondents to the proceeding.

IV. Cities Service Oil Company (Oil Company) and Columbian Fuel Corporation (Columbian), Union Producing Company (Union), and The Preston Oil Company (Preston Oil) have timely filed petitions to intervene.

In our order of April 13, we held that the first phase of the Pipeline Production Area Rate Proceeding should cover the matter of "what is the most appropriate pricing method to be applied to natural gas * * * which is produced by the pipeline or its *affiliated producing company* * * * ?" (emphasis added). Accordingly, in our order issued today designating additional respondents to the proceeding in Docket No. RP66-24, *supra*, p. 806, we have amended Appendix A to the Commission's order of April 13, to include as additional respondents to this proceeding, *inter alia*, the following affiliated producing companies: Oil Company, Columbian, Union and Preston Oil.

Additionally, a group of pipeline companies (including one producer company, Preston Oil) referred to as the Pipeline Production Group[1] has filed a petition to intervene. Each of the member companies of that Group was individually named as a respondent (except Preston Oil which is being included as a respondent in the aforementioned separate order issued today) in our order issued April 13, instituting this proceeding. Since each of the above petitioners is now specifically named as a respondent herein, entitled to all of the rights of a party to this proceeding and including the requested "right to file pleadings, introduce evidence, cross-examine witnesses", it is not necessary or appropriate that they be permitted to intervene either individually or as a group. Accordingly the petition of the so-called Pipeline Production Group should be denied. However, consistent with our desire to expedite this proceeding, the denial of the Pipeline Production Group's petition to intervene is not intended to preclude grouping of parties having a common interest. Accordingly, where appropriate to do so and without derogation of the rights of any parties, parties having common interests should be grouped, thereby limiting the number of persons individually and actively participating in this proceeding.

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[1] Cities Service Gas Company, Colorado Interstate Gas Company, Columbia Gas System Service Corporation (United Fuel Gas Company, Inc., and the Preston Oil Company), Kansas-Nebraska Natural Gas Company, Inc., Lone Star Gas Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Southern Natural Gas Company, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company and United Gas Pipe Line Company.

The Commission orders:

(A) Subject to the rules and regulations of the Commission, all the petitioners and state commissions named in paragraphs II and III are permitted to intervene in this proceeding and to participate on a joint or individual basis. *Provided, however,* That the participation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth by said petitioners in their petitions and *Provided, further,* That the admission of said petitioners as interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The petitions for leave to intervene filed in these consolidated proceedings by the petitioners named in Paragraph IV above are hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, PROJECT NO. 2114

ORDER APPROVING REVISED PROJECT EXHIBITS AND FIXING ANNUAL LAND CHARGES

(Issued May 25, 1966)

On April 13, 1964, February 5, 1966, and February 18, 1966, respectively, Public Utility District No. 2 of Grant County, Washington, licensee for Project No. 2114, filed for Commission approval, revised Exhibits J and K, supplemental and supersedery Exhibit K, and Exhibit F. The project is located on the Columbia River, State of Washington, and affects lands of the United States.

The filing followed several years of cooperative investigations by the licensee and Commission staff to determine the acreage of United States lands occupied by the project. Since the license, issued on November 4, 1955, 14 FPC 1067, has been frequently amended or otherwise altered by Commission orders, we are describing in this order the lands currently occupied by the project and the project works thereon, as shown on the revised exhibits herein approved as part of this license and other exhibits which are already part of the license, with the exception of Exhibit F which does not require Commission approval. The new Exhibit K filings show that the project occupies 1,105.07 acres of lands of the United States, and we are by this order for the first time fixing the amount of annual charges for such occupancy, effective as of October 19, 1959, the first day of project operation.

The Commission finds:

(1) The following described new exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Sheet Numbers	*FPC Number*	*Title*
J-1A	2114-118	Priest Rapids Development General Map.
K-1	2114-141	Project Area and Boundary.
K-2	2114-142	Project Area and Boundary.
K-3	2114-121	Project Area and Boundary.
K-4	2114-122	Project Area and Boundary.
K-5	2114-123	Project Area and Boundary.
K-6	2114-143	Project Area and Boundary.
K-7	2114-125	Project Area and Boundary.
K-8	2114-144	Project Area and Boundary.
K-9	2114-145	Project Area and Boundary.
K-10	2114-128	Project Area and Boundary.
K-11	2114-146	Project Area and Boundary.
K-12	2114-147	Project Area and Boundary.
K-13	2114-148	Project Area and Boundary.
K-14	2114-149	Project Area and Boundary.
K-15	2114-133	Project Area and Boundary.
K-16	2114-134	Project Area and Boundary.
K-17	2114-135	Project Area and Boundary.
K-18	2114-136	Project Area and Boundary.
K-19	2114-150	Project Area and Boundary.
K-20	2114-138	Project Area and Boundary.
K-21	2114-139	Project Area and Boundary.
K-22	2114-140	Project Transmission Line.

(2) The amount of annual charges under the license for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2114.

(B) Subparagraph (a) and subparagraphs (1) and (2) of paragraph (b) of the license are hereby further amended to read as follows:

(a) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license or applications for amendment thereof and which are designated and described as follows:

	FPC Number	*Title*
Exhibit J	2114–2	"Project Area, General Plan."
Exhibit J	2114–114	"Vicinity Transmission System."
Exhibit J	2114–118	"Priest Rapids Development General Map."
Exhibit K	2114–5	"Wanapum Project, Reservoir Map."
Exhibit K	2114–6	"Wanapum Project, Reservoir Map."
Exhibit K	2114–46	"Priest Rapids Project Reservoir Map."
Exhibit K	2114–121	"Project Area and Boundary."
Exhibit K	2114–122	"Project Area and Boundary."
Exhibit K	2114–123	"Project Area and Boundary."
Exhibit K	2114–125	"Project Area and Boundary."
Exhibit K	2114–128	"Project Area and Boundary."
Exhibit K	2114–133	"Project Area and Boundary."
Exhibit K	2114–134	"Project Area and Boundary."
Exhibit K	2114–135	"Project Area and Boundary."
Exhibit K	2114–136	"Project Area and Boundary."
Exhibit K	2114–138	"Project Area and Boundary."
Exhibit K	2114–139	"Project Area and Boundary."
Exhibit K	2114–140	"Project Area and Boundary."
Exhibit K	2114–141	"Project Area and Boundary."
Exhibit K	2114–142	"Project Area and Boundary."
Exhibit K	2114–143	"Project Area and Boundary."
Exhibit K	2114–144	"Project Area and Boundary."
Exhibit K	2114–145	"Project Area and Boundary."
Exhibit K	2114–146	"Project Area and Boundary."
Exhibit K	2114–147	"Project Area and Boundary."
Exhibit K	2114–148	"Project Area and Boundary."
Exhibit K	2114–149	"Project Area and Boundary."
Exhibit K	2114–150	"Project Transmission Line."

(b) principal structures consisting of:

(1) "Priest Rapids Development" at River Mile 397 from the mouth of the Columbia River, to consist of a concrete ogee spillway section containing 22 tainter gates; earthfill embankments connecting the concrete spillway and powerhouse to the high ground at both abutments; fish ladders and associated facilities; design provisions for construction of future navigation locks; a reservoir formed by the dam; a powerhouse integral with the dam, to contain ten (10) vertical shaft Kaplan turbines (in addition, there is a feasibility of adding at least six more units) the turbines to be rated for 114,000 horsepower each at a 78-foot net head (total 1,140,000 hp with ten units; 1,824,000 hp potential final), connected to generators rated at 83,000 kva (0.95 pf) each (total 788,500 kw with ten units) and to contain transformers with 230-kv output voltage; three 230-kv single-circuit transmission lines between Priest Rapids powerhouse and Midway Substation of Bonneville Power Administration and one 230-kv transmission line between Priest Rapids powerhouse and Wanapum-Vantage substation; and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works; and

(2) "Wanapum Development" approximately at River Mile 415, to consist of a concrete ogee spillway section containing 12 tainter gates, earthfill embankments connecting spillway and powerhouse to high ground at each abutment; fish ladders and associated facilities; design provisions for construction of future navigation locks: a reservoir with normal operating pool level at elevation 570; a powerhouse integral with the dam, to contain 10 vertical shaft Kaplan turbines (with provisions for six additional similar units) to be rated for 120,000 horsepower each at 80 feet net head (total 1,200,000 hp initial, 1,920,000 hp potential final) connected to generators rated at 87,500 kva (0.95 pf) each (total of 831,000 kw with ten units), and to contain transformers with 230-kv output voltage; switching station; three 230-kv transmission lines between Wanapum powerhouse and Wanapum-Vantage substation and a 230-kv transmission line from Wanapum-Vantage substation to Columbia substation of Bonneville Power Administration; and appurtenant hydraulic, mechanical and electrical facilities and miscellaneous project works; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license or amendment thereof and which are designated and described as follows:

Exhibit L

Title

FPC Number	*"Priest Rapids Hydroelectric Project—Priest Rapids Development"*
2114–12	"Navigation Provisions."
2114–47	"Fish Facilities General Plan."
2114–48	"Right Bank Fish Facilities."
2114–49	"Left Bank Fish Facilities Upstream."
2114–50	"Left Bank Fish Facilities Downstream."
2114-51	"Left Bank Fish Facilities Powerhouse Collection Channel."
2114–53	"Spillway."
2114–55	"Priest Rapids—Midway 230 kv Lines Nos. 1 and 2."
2114–56	"General Plan and Sections."
2114–57	"Powerhouse Plans."
2114–58	"Powerhouse Plan and Sections."
2114-59	"Powerhouse Sections."

Title

FPC Number	*"Priest Rapids Hydroelectric Project—Wanapum Development"*
2114–97	"Elevation and Sections."
2114–98	"Spillway."
2114–99	"Powerhouse Plans."
2114–100	"Powerhouse Sections."
2114–101	"Powerhouse Section."
2114–110	"General Plan."
2114–111	"Powerhouse—Plans."
2114–112	"Right Bank Fish Facilities—Plan."
2114–113	"Left Bank Fish Facilities—Plan."
Exhibit M	"General Description of Mechanical, Electrical and Transmission Equipment" in three sheets dated May 7, 1962, pertaining to the Priest Rapids Development and the Wanapum Development.

(C) Subparagraph (ii) of Article 47 of the license is hereby amended to read as follows:

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $2,652,17, effective as of October 19, 1959;

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the foregoing order. In acknowledgment of the acceptance of the foregoing order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SUNRAY DX OIL COMPANY, DOCKET NO. G–6822, ET AL.; KANSAS-COLORADO UTILITIES, INC., DOCKET NO. RP64–37

ORDER RELEASING REFUNDS IN PART

(Issued May 25, 1966)

The Commission, by order issued January 29, 1965, in Docket No. G–6822, *et al.*, 33 FPC 128, conditionally approved a rate settlement proposal by Sunray DX Oil Company (Sunray). Pursuant to that order, Sunray was required to make refunds of excess charges on sales made during the period December 31, 1962 to December 31, 1964. The order provided, however, that refund monies should be held by Sunray, or its escrow agent, pending a report by each of Sunray's pipeline purchasers involved, including Kansas-Colorado Utilities, Inc. (Kansas-Colorado), setting forth its intended disposition of the refund amounts it would receive.

The Commission, by letter-order dated June 29, 1964 in Docket No. RP64–37, accepted without suspension, certain revised tariff sheets of Kansas-Colorado, reflecting an increase in rates in its then sole existing rate schedules F–1 and G–1. The revised tariff sheets were allowed to become effective July 1, 1964, subject to the condition that, among other things, Kansas-Colorado flow-through to its jurisdictional resale customers the proportionate share of refunds it may receive from any producer supplier.

The total amount of refunds to be received by Kansas-Colorado from Sunray is $11,993.43, including interest. In its report, as amended, setting forth its plans for distributing the subject refund, Kansas-Colorado proposes to flow-through the amounts refundable to it on purchases from Sunray after July 1, 1964. Kansas-Colorado notes that prior to the aforementioned acceptance of its rate increase, without suspension, its jurisdictional cost of service exceeded jurisdictional revenues by $150,000, and that prior to July 1, 1964 it had not passed on to its jurisdictional customers any part of the Sunray increased rate. Accordingly, Kansas-Colorado proposes to flow-through to Plateau Natural Gas Company, its sole jurisdictional customer during the period covered by the refunds here involved, the amount of $1,770.04.

The report submitted by Kansas-Colorado, as amended, with respect to its intended disposition of refunds from Sunray, is in satisfactory compliance with the pertinent condition contained in the Commission's letter-order of June 29, 1964, in Docket No. RP64–37. Plateau is successor in interest to

Kansas-Colorado pursuant to our order issued January 25, 1966, in Docket No. CP66–154, and will therefore receive the total refund of $11,993.43, including the amount of $1,770.04, from Sunray. It is therefore, not necessary for us to order a flow-through to Plateau of the $1,770.04.

The Commission orders:

(A) Within 45 days from the date of this order, Sunray DX Oil Company, or its escrow agent, is directed to release and pay over to Plateau Natural Gas Company, successor in interest to Kansas-Colorado Utilities, Inc., the amount of $11,993.43, the total amount of refund due to Kansas-Colorado under the Sunray settlement order issued January 29, 1965, in Docket No. G–6822, *et al.*

(B) Within 60 days from the date of this order, Sunray shall file a report showing the amount paid to Platéau. The principal sums and escrow earnings and/or interest (as the case may be) shall be separately stated.

(C) Pending further order of the Commission, Sunray shall retain all remaining refundable amounts in accordance with paragraph (E) of the order issued January 29, 1965 in Docket No. G–6822, *et al.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE ATLANTIC REFINING COMPANY, PENNZOIL COMPANY AND HUMBLE OIL & REFINING COMPANY

ORDER GRANTING MOTION FOR RECONSIDERATION AND AUTHORIZING PREPAYMENTS

(Issued May 26, 1966)

The Atlantic Refining Company (Atlantic) on March 25, 1966, filed a motion for reconsideration of the Commission's letter-order issued February 24, 1966, accepting effective as of February 28, 1966, a contractual amendment executed on January 3, 1966, which was designated as Supplement No. 2 to Atlantic's FPC Gas Rate Schedule No. 286. The amendatory agreement authorizes Atlantic to collect prepayments from Northern Natural Gas Company (Northern), the purchaser, for the period between July 22, 1965 and February 25, 1966, when deliveries commenced to Northern from the Coyanosa Plant in Pecos County, Texas, under the subject rate schedule. The February 24 letter–order, however, did not authorize prepayments prior to February 28, 1966, thirty days after the date of filing.

Atlantic claims in its motion that it should be allowed to collect the prepayments authorized under the amendatory contract because it refrained from cancelling its contract with Northern, as it had the right to do, when Northern was unable to commence the purchase of gas by April 1, 1965, because of the delay involved in Northern obtaining certificate authorization. Atlantic points out that under the prepayment provision Northern has the right to receive "make-up" gas over the life of the contract. Atlantic further points out that, under the amendatory agreement, prepayments commence on July 22, 1965, the date it began to suffer drainage as a result of the commencement of other producer sales to El Paso Natural Gas Company in the Coyanosa Field.

Under the circumstances set forth by Atlantic in its motion we conclude that prepayment should be authorized and will therefore accept Atlantic's prepayment agreement effective as of July 22, 1965.

Prepayment agreements were also filed by Humble Oil & Refining Company (Humble) and Pennzoil Company (Pennzoil) for sales to Northern from the Coyanosa Plant similar to the one filed by Atlantic, which were designated Supplement No. 1 to Humble's FPC Gas Rate Schedule No. 365 and Supplement No. 3 to Pennzoil's FPC Gas Rate Schedule No. 13. Humble's agreement became effective as of August 2, 1965, thirty days after the date of filing, as provided in the Secretary's letter of July 30, 1965. Pennzoil's agreement was accepted by the Commission's letter of January 19, 1966, to be effective on the date of initial delivery under Pennzoil's rate schedule.

In view of the action taken herein on Atlantic's prepayment agreement, we conclude that it is appropriate on our own motion to treat Humble and Pennzoil in a similar fashion. We shall therefore also make the prepayment agreements of Humble and Pennzoil effective as of July 22, 1965.

The Commission orders:

(A) Atlantic's motion for reconsideration filed on March 25, 1966 is granted, and Supplement No. 2 to Atlantic's FPC Gas Rate Schedule No. 286 is accepted effective as of July 22, 1965.

(B) Supplement No. 1 to Humble's FPC Gas Rate Schedule No. 365 and Supplement No. 3 to Pennzoil's FPC Gas Rate Schedule No. 13 are accepted effective as of July 22, 1965.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GEORGE MITCHELL & ASSOCIATES, INC., AGENT, DOCKET NO. RI63-23

ORDER PERMITTING WITHDRAWAL OF CERTAIN ESCROWED FUNDS

(Issued May 26, 1966)

By letter filed April 18, 1966, George Mitchell & Associates, Inc., Agent (Mitchell) advised that they had inadvertently collected an increased rate of 18.5 cents per Mcf, in Docket No. RI63-23, rather than 17.5 cents per Mcf, as authorized under the temporary certificate in Docket No. G-19308, for the period from January 2, 1963 to September 22, 1965 from Florida Gas Transmission Company (Florida Gas) for Mr. Gregory Gallagher's working interest. Mitchell states that one cent per Mcf of the 18.5 cent rate attributable to Mr. Gallagher's interest, which amounts to $1,098.94 for the aforementioned period of time, was placed in an escrow account with The Chase Manhattan Bank of New York in accordance with an Escrow Agreement dated November 26, 1962 and filed herein. Mitchell submitted a letter from Florida Gas requesting that said overpayment be refunded and requested authority to withdraw said amount for the purpose of refunding this amount to the purchaser.

The Commission finds:

For the foregoing reasons, good cause exist for permitting Mitchell to withdraw $1,098.94 from the aforementioned escrow account and to refund said amount, plus interest at 7 percent per annum, to the purchaser as hereinafter ordered.

The Commission orders:

Mitchell is permitted to withdraw $1,098.94 from the above-mentioned escrow account; and within 90 days from the date of this order, shall (1) refund said

amount, plus interest at 7 percent per annum computed to the date of actual refund, to Florida Gas, and (2) report to the Commission in writing, the amount of overpayment to Florida Gas, showing separately the amount of principal and interest so paid, and the bases used for such determination, together with a release from Florida Gas showing receipt of said principal and interest.

OPINION NO. 487-A

GEORGIA POWER COMPANY, DOCKET NOS. E-7099 AND E-7193

OPINION AND ORDER DENYING REHEARING AND MOTION FOR STAY

(Issued May 26, 1966)

Syllabus

1. Request for stay pending appeal, and reasons advanced in support thereof, fail to meet standards of *Virginia Petroleum Jobbers* and must be denied. P. 819.
2. Commission *denies* application for rehearing and stay of prior opinion and order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

On April 28, 1966, Georgia Power Company (Georgia Power) filed an application for rehearing, supplemented by a motion for amendment filed May 9, 1966, of the Commission's Opinion No. 487 and order issued March 30, 1966, 35 FPC 436. There we found that a resale load ceiling provision and a resale credit provision contained in Georgia Power's standard form WR-4 contracts for service to municipally owned electric distribution systems were unjust, unreasonable and unduly discriminatory within the meaning of Sections 205 and 206 of the Federal Power Act and were, therefore, unlawful. We ordered these provisions to be eliminated from Georgia Power's rate schedules and provided for the filing of rate schedule supplements in compliance with our order.

Georgia Power alleges error on two grounds:

1. The Commission, in determining "the just and reasonable rate * * * to be thereafter observed and in force," as required by Section 206(a) of the Federal Power Act, erred (a) in failing to consider the relationship between the deleted provision and the existing rate schedule and (b) because of the existence of that relationship erred in failing to order further hearings in this Docket to determine "the just and reasonable rate * * * to be thereafter observed and in force," as required by Section 206(a) of the Federal Power Act.

2. The Commission erred in holding that Georgia Power is adequately protected by its right to file a new rate schedule under Section 205 of the Federal Power Act.

Georgia Power requests that further hearings in this proceeding be instituted to set a new rate level and that our Opinion No. 487 and order be stayed until this new rate level is established. In the event of denial of such relief, Georgia

Power requests a stay of our Opinion and order pending appeal, citing *Virginia Petroleum Jobbers* v. *Federal Power Commission*, 259 F. 2d 921 (CADC–1958).

In general, the issues raised in the application for rehearing, and the amendment thereto, are adequately discussed in our original Opinion, and no purpose will be served in repeating our discussions except for the comments below.

This is not a proceeding to determine just and reasonable rates, and involves the question of whether two provisions in the WR–4 rate schedules of Georgia Power, applicable to wholesale sales to municipally-owned distributors for resale, are unjust, unreasonable and unduly discriminatory and therefore unlawful under Sections 205 and 206 of the Federal Power Act. In considering the relationship between the deleted provisions and the existing rate schedule, we made it clear in our March 30 order that our refusal to expand this proceeding into a rate case in no way precluded Georgia Power from submitting for filing new rate schedules reflecting increased rates, in accordance with Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. Georgia Power may avail itself of this opportunity at any time, separate from this proceeding, where its contractual commitments permit such a filing.

Concerning the request for a stay, the burden of meeting the standards prescribed in *Virginia Petroleum Jobbers, supra*, is on Georgia Power. That burden has not been met since Georgia Power has made no showing of any special facts or circumstances which would justify the reasonableness of its contractural restrictions in this proceeding. There has been no showing of irreparable injury; a possible revenue loss on other sales cannot justify the retention of discriminatory provisions in rate schedules. It is clear that the municipalities would continue to suffer injury if a stay is granted. In Opinion No. 487, we concluded that the restrictions in service contained in Georgia Power's contracts with the municipalities which it serves adversely affects them. Moreover, these limitations restrict the development of their electric systems. Nothing has been alleged here which would alter that conclusion.

It follows that it is not in the public interest for a stay to be granted permitting Georgia Power to enforce its contractual limitations pending court review. Accordingly, we conclude that Georgia Power's request for a stay pending appeal, and the reasons advanced in support thereof, fail to meet the standards set forth in *Virginia Petroleum Jobbers, supra*, and must be denied.

We have considered the assignments of error and the grounds for rehearing set forth in the application and the amendment thereto and have reconsidered our Opinion No. 487 and accompanying order. The arguments advanced here by Georgia Power are similar, if not identical, to those advanced by it in briefs before the examiner and rejected by us in the Opinion. Our conclusions as to these matters remain unchanged. No new facts or arguments are called to our attention which would be cause for granting rehearing or disturbing the original Opinion and order.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing and the amendment thereto of Georgia Power Company present no new facts or principles of law which were not fully considered by the Commission when it issued its Opinion No. 487 and order or which, having now been considered, warrant any change in or modification of said Opinion and order.

(2) The request for a stay of our Opinion No. 487 and order should be denied.

The Commission orders:

(A) The application for rehearing filed on April 28, 1966, as amended on May 9, 1966, by Georgia Power is denied.

(B) The request for a stay of the Commission's Opinion No. 487 and order is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ANNUAL REPORTING OF RESEARCH AND DEVELOPMENT ACTIVITIES BY ELECTRIC UTILITIES AND NATURAL GAS COMPANIES, DOCKET NO. R-256

ORDER NO. 322

AMENDING ANNUAL REPORT F.P.C. FORMS NOS. 1 AND 2 AND PRESCRIBING DEFINITION OF "RESEARCH AND DEVELOPMENT"

(Issued May 26, 1966)*

On February 11, 1964, the Commission gave notice by publication in the Federal Register (29 F.R. 2512) that it proposed to amend the Commission's Annual Report Forms No. 1 and No. 2, prescribed, respectively, by § 141.1 and 260.1 of its regulations, for use by public utilities, licensees and natural gas companies, by the addition of a new schedule entitled "Research and Development Activities." The proposed schedules are designed to obtain information, not readily, reliably or uniformly available from existing sources, concerning the general nature of electric utility and natural gas research and development projects and the accounting related thereto. Such information will materially assist the Commission in its effort to encourage technological developments to improve service and lower costs in the electric utility and natural gas industries by providing consistent and reliable data concerning the character and scope of current research.

Comments were invited from interested persons to be submitted by March 16, 1964. Upon request, the time for filing written views was subsequently extended through April 15, 1964 (29 F.R. 3442). In response to this notice and invitation, the Commission has received comments from or on behalf of the 27 respondents listed in the margin,[1] all of which have been given careful consideration in preparing the text of the regulation herein promulgated. The principal objections to the proposed new schedules were that they would be open to public inspection and would require the disclosure of secret and confidential information, thereby infringing on contractual commitments, aiding competitors, compromising patent rights and ultimately hampering research and development activities. Additionally, there were objections to the cost and burden of supplying the needed data, the low monetary limit set for projects required to be reported, the requirement for identifying the particular accounts charged with research and development expense, and absence of explanation of what the term "significant technological research and development projects" was intended to cover. The necessity of providing the Commission with research and development information was questioned and the possibility of obtaining information from alternative sources was suggested.

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*Published in the Federal Register on June 3, 1966 (31 F.R. 7897).

[1] American Electric Power Service Corporation, Baltimore Gas & Electric Company, Columbia Gas System Service Corporation, Commonwealth Edison Company, Bureau of Census (Dept. of Commerce), Edison Electric Institute, El Paso Natural Gas Company, Hope Natural Gas Company, Kansas-Nebraska Natural Gas Company, Inc., Lake Shore Pipe Line Co., National Science Foundation, Natural Gas Pipeline Company of America, New England Electric System, New York State Natural Gas Corporation, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Pennsylvania Public Utility Commission, Portland General Electric Company, Public Service Electric and Gas Company, Southern Union Gas Company, Tennessee Gas Transmission Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, Virginia Electric & Power Company, Washington Gas Light Company.

This proceeding provides an unusually good example of the purpose to be served by the notice requirements of the Administrative Procedure Act for the comments and suggested changes in the rule proposed have proved to be extremely pertinent and helpful. They have enabled us to revise our proposed reporting schedules in the interest of clarity, definition, and simplification while, at the same time, obtaining a supply of information adequate for our purposes which, as stated in the notice, is to enable the Commission to enhance its ability to stay abreast of developments in the two industries over which it has jurisdiction.

The schedules here prescribed are designed to provide the Commission annually with a description of the character and cost of the principal (*i.e.*, those costing $5,000 or more) electric utility and natural gas research activities. Projects will be classified by system function, such as, fossil fuel, steam plant, transmission, pipeline design, storage. Each project will be briefly described by area of research, for example, safety, extra-high voltage transmission, pollution.

We recognize that the furnishing of this information imposes both additional costs and increased personnel burdens upon the reporting companies and have therefore endeavored to minimize that burden by requiring only brief descriptions of research projects. This does not mean, however, that the descriptions may be so general as to be meaningless. There is widespread interest these days concerning the adequacy of research into such matters as high-strength steel pipe for use in pipelines, gasification of coal, handling of liquefied natural gas, fuel cells, AC–DC conversion, appearance of transmission facilities, and new technologies of both underground and high-voltage transmission of electric energy. Wherever possible, therefore, projects relating to such specific matters should be so identified.

We shall not attempt to discuss all the suggestions for revising the text of the instructions in the schedules. Suffice it to say that those adopted were for the purpose of removing the misapprehensions of many respondents as to the extent of the detail required.

Other points raised, however, require more specific mention. Several respondents argued that the accounting detail required in the schedules as proposed would be exceedingly burdensome. We agree and are requiring only that such data be summarized with an indication as to whether the amounts expended (estimated, if necessary) were charged to plant or expensed.

Many respondents argued that such information should for various reasons be kept confidential, particularly with respect to the disclosure of business and trade secrets and the names of persons or other entities participating with the reporting company in a research project. There is some merit in these comments and we will not require the reporting of such names unless they be affiliated with the reporting company. We are not requiring the disclosure of trade secrets, for we believe that projects can be described sufficiently for our purpose in terms designed to protect any secrecy the company deems necessary.

Illustrative of the current interest in the adequacy of research was the establishment of the Electric Research Council whose objectives are to stimulate more fully-coordinated intensive research efforts in all segments of the electric power generating and distribution organizations in the country—investor-owned, state and local public, cooperative and federal. Because the Council was organized about a year following the initiation of this proceeding, the schedule originally proposed made no provisions for reporting expenditures made in its support. We trust and anticipate that its work will have full participating support from the industry. Such support should have public recognition and with that purpose in mind we have revised paragraph 2.B. of instructions in the electric schedule (attachment A) [2] to provide therefor.

Finally, in response to many of the comments, we are amending the Uniform System of Accounts by adding a definition of the term "Research and Development."

The Commission believes that the modifications incorporated in the proposed regulations meet the principal objections to the original proposal while at the same time enabling the Commission to obtain research and development information adequate for its minimum needs. Acting pursuant to the Federal Reports Act (5 U.S.C. 139), the Bureau of the Budget has approved the collection of the information in the form herein prescribed.

Under the regulations here adopted, the schedules will be initially effective for the reporting year 1966 instead of 1963, as originally proposed.

The Commission further finds:

(1) The addition to Annual Report Forms Nos. 1 and 2 of new schedules on research and development activities will provide important assistance to the Commission in carrying out its obligations under the Federal Power and Natural Gas Acts by assuring that the Commission will have adequate, current, and readily comparable information concerning research and development activities within the industries over which the Commission exercises regulatory responsibilities.

(2) In view of the foregoing, and upon consideration of all relevant matters presented, these amendments are necessary and appropriate for the purposes of the Federal Power and Natural Gas Acts.

(3) The definition of "research and development" here being added to the Uniform System of Accounts (18 CFR, Parts 101 and 102) is responsive to most of the comments submitted. It simplifies rather than increases the reporting burden and is one with which the companies are, we believe, familiar. Further notice thereof prior to adoption, as provided in section 4 of the Administrative Procedure Act, is therefore unnecessary.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 304, 309 and 311 thereof (49 Stat. 855, 858, 859; 116 U.S.C. 825c, 825h, 825j) and the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Effective for the reporting year 1966, Annual Report FPC Form No. 1 and FPC Form No. 2, prescribed for Class A and B electric utilities, licensees, and natural gas companies by § 141.1, Subchapter D, and § 260.1, Subchapter G, respectively, of Chapter I, Title 18 of the Code of Federal Regulations, are amended by adding a new schedule to each entitled "Research and Development Activities" as set out in *Attachments A and B*,[2] hereto.

(B) Paragraph (d) of the said § 141.1 and paragraph (c) of the said § 260.1 are amended by inserting "Research and Development Activities" immediately before "Attestation" in the list of schedules.

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[2] Omitted in printing.

(C) The section, Definitions, in Part 101, "Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," Subchapter C, of said Title 18, is amended by renumbering the existing definition 27 as 27.A. and inserting, to follow such renumbered definition, the following:

B. "Research and development" means expenditures incurred by public utilities and licensees which represent research and development costs in the experimental or laboratory sense. Unless otherwise prescribed by the Commission, the definition of the term "research and experimental expenditures" contained in Internal Revenue Service Regulations, Section 1.174–2 or superseding revisions thereof, shall be the controlling definition for the purposes of this uniform system of accounts and the related annual report forms prescribed by the Commission. Terms in the general definition of the Internal Revenue Service regulations have been modified for this system of accounts. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property, and the improvement of already existing property of the type mentioned. The term does not include expenditures such as those for the ordinary testing or inspection of materials or products for quality control or those for efficiency surveys, management studies, consumer surveys, advertising, or promotions. However, the term includes the costs of obtaining a patent, such as attorney's fees expended in making and perfecting a patent application. On the other hand, the term does not include the costs of acquiring another's patent, model, production or process, nor does it include expenditures paid or incurred for research in connection with literary, historical, or similar projects.

Research and development expenditures include, in addition to the costs incurred by the public utilities and licensees for research or experimentation undertaken directly by them, expenses paid or incurred for research or experimentation carried on in their behalf by another person or organization (such as a research institute, foundation, engineering company, or similar contractor). However, any expenditures for research or experimentation carried on in behalf of public utilities and licensees by another person are not research and development expenses to the extent that they represent expenditures for the acquisition or improvement of land or depreciable property, used in connection with the research or experimentation, to which the public utilities and licensees acquire rights of ownership.

(D) The section, Definitions, in Part 201, "Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act," Subchapter F of said Title 18, is amended by renumbering the existing definition 24 as 24.A. and inserting, to follow such renumbered definition, the following:

B. "Research and development" means expenditures incurred by natural gas companies which represent research and development costs in the experimental or laboratory sense. Unless otherwise prescribed by the Commission, the definition of the term "research and experimental expenditures" contained in Internal Revenue Service Regulations, Section 1.174–2 or superseding revisions thereof, shall be the controlling definition for the purposes of this uniform system of accounts and the related annual report forms prescribed by the Commission. Terms in the general definition of the Internal Revenue Service regulations have been modified for this system of accounts. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property, and the improvement of already existing property of the type mentioned. The term does not include expenditures such as those for the ordinary testing or inspection of materials or products for quality control or those for efficiency surveys, management studies, consumer surveys, advertising, or promotions. However, the term includes the costs of obtaining a patent, such as attorney's fees expended in making and perfecting a patent application. On the other hand, the term does not include the costs of acquiring another's patent, model, production or process, nor does it include expenditures paid or incurred for research in connection with literary, historical, or similar projects.

Research and development expenditures include, in addition to the costs incurred by the natural gas companies for research or experimentation undertaken directly by them, expenses paid or incurred for research or experimentation carried on in their behalf by another person or organization (such as a research institute, foundation, engineering company, or similar contractor). However, any expenditures for research or experimentation carried on in behalf of natural gas companies by another person are not research and development expenses to the extent that they represent expenditures for the acquisition or improvement of land or depreciable property, used in connection with the research or experimentation, to which the natural gas companies acquire rights of ownership.

(E) The amendments herein prescribed shall be effective July 1, 1966.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2337

ORDER AMENDING LICENSE

(Issued May 26, 1966)

The license for Project No. 2337, 32 FPC 68, located on South and Middle Forks of Rogue River and Imnaha and Daniels Creeks, in Jackson County, Oregon, requires by Article 37 thereof that the licensee file a recreational use plan for the project which shall include recreational improvements to be provided by the licensee and such improvements to be provided by others.

In a statement filed by the licensee on July 12, 1965 under Article 37, the licensee states that the potential recreational improvements at the project are very limited and that adequate and more desirable recreational facilities are provided in the surrounding area by public agencies. The licensee's statement is supported by the Assistant Superintendent of State Parks of the State of Oregon.

Since it appears that any recreational improvements which could be provided at Project No. 2337 would not be used at this time, Article 37 should be eliminated from the license. In the event such improvements should become desirable, they may be required pursuant to Article 12 of the license.

The Commission finds:

It is appropriate and in the public interest that Article 37 be eliminated from the license for Project No. 2337.

The Commission orders:

The license for Project No. 2337 is hereby amended by eliminating Article 37 therefrom.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2337

ORDER APPROVING PROJECT EXHIBIT K MAPS

(Issued May 26, 1966)

On July 12, 1965, Pacific Power & Light Company, Licensee for Project No. 2337, known as Prospect No. 3 Hydroelectric Project,, located on the South and Middle Forks of Rogue River, Imnaha and Daniels Creeks in Jackson County, Oregon and affecting lands of the United States within the Rogue River National Forest, filed for Commission approval, in accordance with Article 35 of its license, a set of three Exhibit K maps (FPC Nos. 2337-6 through 8) showing the routing and right-of-way of the project 69 kv transmission line from the Prospect-3 powerhouse to the Prospect substation.

The Commission finds:

It is consistent with the public interest that sheets 3 through 5 of Exhibit K (FPC Nos. 2337-6 through 8) entitled "Prospect Sub. to Prospect-3 P. H." showing the routing and right-of-way of the project 69 kv transmission line be approved as part of the license.

The Commission orders:

The Exhibit K maps for Project No. 2337 as described in the above finding are approved as part of the license for Project No. 2337.

Before Commissioners: Lee C. White, Chairman: L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON AND CITY OF EVERETT, WASHINGTON, PROJECT NO. 2157

ORDER APPROVING PROJECT EXHIBIT K MAPS

(Issued May 26, 1966)

On April 20, 1965, Public Utility District No. 1 of Snohomish County, joint licensee with the City of Everett, Washington, for Project No. 2157, filed for Commission approval four Exhibit K maps showing the project boundary for Dam and Reservoir No. 1 of the project, located on the Sultan River in Snohomish County, Washington, and affecting lands of the United States within the Snohomish National Forest. The filing was pursuant to the provisions of Article 34 of the license.

The Commission finds:

The maps, designated and described as Exhibit K sheets 1 through 4 (FPC No. 2157-53 through -56) entitled "Reservoir Maps–Dam No. 1," conform to the Commission's rules and regulations and should be approved as part of the license for the project; license Exhibit K: (FPC No. 2157-13 through -16) and license Exhibit K: (FPC No. 2157-23) which have been superseded to the extent that they show the tentative project boundary of Reservoir and Dam No. 1, should be eliminated from the license to the extent that they show the tentative project boundary; and license Exhibit K: (FPC No. 2157-24 through -26) which has been entirely superseded, should be eliminated from the license.

The Commission orders:

The Exhibit K maps described in the above finding as conforming to the Commission's rules and regulations are hereby approved as part of the license for Project No. 2157; the license Exhibit K maps described in the same finding as being partly superseded are hereby eliminated from the license to the extent that they have been superseded; and the license Exhibit K map described in the finding as being entirely superseded is hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CHICAGO DISTRICT PIPELINE COMPANY, DOCKET NO. CP66-242

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1966)

On January 28, 1966, Chicago District Pipeline Company (Applicant) filed in Docket No. CP66-242 an application, as supplemented on February 23, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate an odorizer, a side tap connection on its existing 36-inch Joliet–Calumet No. 3 pipeline, and approximately 380 feet of 36-inch pipeline connecting the side tap with the facilities to be constructed by Natural Gas Pipeline Company of America (Natural). The facilities will be located in southeastern Cook County, Illinois.

The purpose of the proposed construction is to permit Applicant to receive and transport natural gas for its customers from the terminus of Natural's proposed 36-inch Herscher-Dyer Road pipeline. The construction of the Herscher-Dyer Road pipeline is authorized in our order in Natural Gas Pipeline Company of America, Docket No. CP66-169 (Phase I), being issued concurrently herewith, *infra*, p. 828.

Applicant states that no new volumes above presently authorized volumes of natural gas will be transported for its customers. Applicant receives natural gas from Natural at points near Elgin, Joliet and Minooka, Illinois, and from Midwestern Gas Transmission Company at a point near the village of Channahon, Illinois. The gas is then transported for the account of Applicant's customers located in Illinois and Indiana. Applicant makes no sales of natural gas.

The facilities proposed by the instant filing will assure the continuity of transportation service to Applicant's customers in the event of (1) an operational loss of capacity of Natural's facilities upstream from the present point of deliveries at Joliet and Minooka, Illinois, and (2) an operational loss of capacity of any one of Applicant's three Calumet pipelines between the Joliet and Minooka delivery points at the west end of Applicant's system and the new delivery point at the eastern end.

The total estimated cost of the facilities to be constructed by Applicant is $116,000, which will be financed from cash on hand.

Due notice of the filing of the application was published in the Federal Register on February 16, 1966 (31 F.R. 2798). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Chicago District Pipeline Company, an Illinois corporation with its principal place of business in Joliet, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 3, 1943, in Docket No. G–289 (3 FPC 911).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Chicago District Pipeline Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-169 (PHASE I)

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1966)

On December 1, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66-169 an application, as supplemented on March 17 and April 7, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas transmission and storage facilities during 1966 and 1967 and the sale of natural gas for resale, all as more fully set forth in the application.

As an integral part of Applicant's two-year expansion proposal Applicant proposes to acquire a new gas supply from Texaco Inc. in the Erath Field, Vermilion Parish, Louisiana. Texaco has filed an application in Docket No. CI66-608 for a certificate of public convenience and necessity authorizing the sale of natural gas to Applicant. Texaco proposes to sell its gas at a rate in excess of that heretofore found to be "in line" for sales from South Louisiana; and, therefore, it will be necessary to consider its application in Docket No. CI66-608 in a formal hearing. Although Applicant's deliverability life without the Texaco reserves does not meet the standards ordinarily used by the Commission, Applicant has demonstrated its ability to attach substantial reserves as needed to meet its rapidly increasing requirements and the Commission expects this situation to be remedied in the near future through acquisition of the Texaco reserves or through reserves obtained from others. Notwithstanding the fact that the construction of certain of the facilities covered by the application is related to the procurement of the Texaco or other gas in lieu thereof, Applicant has shown an immediate need and ability to proceed with its proposals for 1966 only. The proceedings on Applicant's application, therefore, will be divided into two phases: The 1966 proposals will be designated as Phase I and the 1967 proposals will be designated as Phase II. The instant order will pertain to Phase I, and Phase II will be disposed of in a future proceeding after determination of Docket No. CI66-608. Applicant concurs in this division.

Applicant's customers have executed precedent agreements to purchase commencing December 1, 1966, 93,238 Mcf of gas per day of a proposed 104,000[1] Mcf per day increase in pipeline capacity. All of a proposed 78,000[2] Mcf increase in peak day storage delivery capacity has been committed to customers. These precedent agreements state that the customers will execute service agreements to purchase the added contract volumes effective December 1, 1966. In the proposed 1966 expansion 10,762 Mcf per day of pipeline capacity is unallocated. Applicant currently has 26,962 Mcf of unallocated capacity of which 3,644 Mcf has been requested by customers in pending applications.[3] Assuming that these pending applications will be granted, Applicant will have 34,080 Mcf or approximately one percent of its system capacity unallocated after certification of the proposed Phase I facilities.

Specifically, Applicant seeks authorization to sell and deliver additional daily contract quantities, or maximum daily quantities, of natural gas to existing resale customers commencing December 1, 1966, as follows:

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[1] 100,000 Mcf @ 1,040 Btu converted to 1,000 Btu sales basis.

[2] 75,000 Mcf @ 1,040 Btu converted to 1,000 Btu sales basis.

[3] Docket Nos. CP66-126, CP66-148, CP66-262 and CP66-264.

Customer	*Mcf at 1,000 Btu per cubic foot and 14.65 psia*
Rate Schedule CD-1:	
Associated Natural Gas Co.	24
Central Illinois Electric & Gas Co.	2,500
Illinois Power Company	—
Interstate Power Company	600
Iowa Electric Light & Power Co.	3,245
Iowa-Illinois Gas & Electric Co.	—
Iowa Power and Light Co.	74
Iowa Southern Utilities Co.	271
North Shore Gas Company	4,000
Northern Illinois Gas Co.	50,000
Northern Indiana Public Service Co.	30,000
Princeton Gas Service Co.	157
Wisconsin Southern Gas Co.	1,944
Total CD-1	92,815
Rate Schedule G-1:	
American Gas Company	213
Central Illinois Public Service Co.	—
Monarch Gas Company	50
City of Perryville Missouri	—
City of Pinckneyville Illinois	—
United Cities Gas Company	160
Total G-1	423
Total contracted for by customers	93,238
Unallocated capacity	10,762
Total	104,000

Applicant proposes to allocate for service commencing December 1, 1966, additional storage withdrawal capacity to its customers in accordance with the procedure of allocation set forth in its FPC Gas Tariff, Second Revised Volume No. 1, Rate Schedule S-1. The additional maximum withdrawal quantities which will result from the application of the tariff allocation procedure are as follows:

Customer	*Mcf at 1,000 Btu per cubic foot and 14.65 psia*
Allied Gas Co.	479
Associated Natural Gas Co.	107
Central Illinois Electric & Gas Co.	3,065
Illinois Power Co.	1,936
Interstate Power Co.	400
Iowa Electric Light & Power Co.	1,415
Iowa Illinois Gas & Electric Co.	7,416
Iowa Power and Light Co.	661
Iowa Southern Utilities Co.	294
North Shore Gas Co.	3,157
Northern Illinois Gas Co.	25,630
Northern Indiana Public Service Co.	8,961
Peoples Gas Light and Coke Co.	23,397
Princeton Gas Service Co.	144
City of Sullivan Illinois	82
Wisconsin Southern Gas Co.	684
City of Nebraska City, Nebraska	172
Total	78,000

Transmission facilities proposed for 1966 consist of 126.46 miles of 36-inch loop and 43,750 horsepower of compression on Applicant's Gulf Coast-Chicago mainline and 49.2 miles of 36-inch line extending northeast from Herscher Storage Field to a point of connection on the existing 36-inch line of Chicago District Pipeline Company near the Glenwood-Dyer Road in Cook County, Illinois. Cost of these facilities is estimated to be $37,664,000. Additional storage facilities to be constructed in the Cairo, Hersher and Keota fields consist of 19 injection-withdrawal wells, 19.46 miles of various size pipeline and 10,140 horsepower of compression. The 1966 storage facilities are estimated to cost $6,200,000. The total cost of transmission and storage facilities is estimated to be $43,864,000. Applicant's existing and proposed capacities are as follows:

Period	Capacity—Mcf at 14.65 Psia and 1,000 Btu		
	Line Flow	Storage	Total
At 12-31-65:			
Allocated	2, 249, 598	1, 040, 000	3, 289, 598
Unallocated	26, 962		26, 962
Total	2, 276, 560	1, 040, 000	3, 316, 560
1966 Expansion:			
Allocated	93, 238	78, 000	171, 238
Unallocated	10, 762		10, 762
Total	104, 000	78, 000	182, 000
At 12-31-66:			
Allocated	2, 342, 836	1, 118, 000	[1] 3, 460, 836
Unallocated	37, 724		37, 724
Total	2, 380, 560	1, 118, 000	[1] 3, 498, 560

[1] Excludes pending application to serve the St. Louis area with 67,600 Mcf.

The proposed facilities will be financed initially through short-term bank loans and loans from Applicant's parent, The Peoples Gas Light and Coke Company. Permanent financing will be through the issuance of first mortgage bonds, debentures and preferred stock.

After due notice, petitions for leave to intervene in support of the application have been filed by Iowa Electric Light and Power Company, Iowa-Illinois Gas and Electric Company, Iowa Southern Utilities Company, Northern Indiana Public Service Company, Northern Illinois Gas Company, North Shore Gas Company and The Peoples Gas Light and Coke Company. No further petitions for leave to intervene, notices of intervention or protests to the granting of the application have been received.

At a hearing held on May 26, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation

and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission; and the construction and operation thereof and the transportation and sale of natural gas, all of which are hereinbefore designated as Phase I, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application in this proceeding and hereinbefore designated as Phase I, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-262

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1966)

On February 9, 1966, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66-262 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the firm quantity of natural gas transported for sale to Phillips Petroleum Company (Phillips), an existing direct industrial customer of Applicant, of 1,000 Mcf of gas per day to a total firm quantity of 24,000 Mcf per day and a corresponding decrease of 1,000 Mcf per day in the transportation of off-peak quantities to a total off-peak quantity of 2,000 Mcf per day, all as more fully set forth in the application.

Applicant is presently authorized to transport for sale to Phillips, for use in its Beatrice, Nebraska, ammonia plant, 23,000 Mcf of gas per day on a firm basis and up to 3,000 Mcf of gas per day on an interruptible off-peak basis pursuant to Commission orders issued October 12, 1964, 32 FPC 980, in Docket No. CP65-16 and August 13, 1965, 34 FPC 507, in Docket No. CP65-169. Pursuant to the exercise of an option granted in Article V of its contract dated July 7, 1964 with Applicant, Phillips has elected to convert 1,000 Mcf per day of off-peak gas to firm gas increasing the total firm delivery quantity to 24,000 Mcf per day.

No additional facilities are involved and the proposed service will not affect Applicant's service to its other customers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 26, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed transportation and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid transportation and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the transportation and delivery of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

(C) The service authorized shall commence as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 30 days of the date on which this order issues.

(D) The certificate authorization granted in paragraph (A) above shall be effective concurrently with the certificate authorization issued in Phase I of Docket No. CP66–169, *supra*, p. 828.

(E) The certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66–264

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 27, 1966)

On February 11, 1966, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66–264 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 2,000 Mcf of gas per day on a firm basis to Interstate Power Company (Interstate), an existing customer of Applicant, all as more fully set forth in the application.

Applicant states that it has been informed by letter dated February 2, 1966, that Interstate requires an additional firm service of 2,000 Mcf of gas per day due to a depletion in its storage service, the addition of a number of new firm customers, a shortage of propane for use in its peak shaving facilities and an extended period of extreme temperature. The proposed additional service will increase Applicant's deliveries to Interstate to a total of 27,934 Mcf of gas per day.

The proposed sale volumes will be obtained through the utilization of Applicant's existing unallocated capacity of 26,962 Mcf of gas per day.

No additional facilities are involved and the proposed service will not affect Applicant's service to its other customers.

Applicant was issued a temporary certificate on March 18, 1966, authorizing the delivery of an additional 2,000 Mcf of natural gas per day to Interstate.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G–9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits

in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of such Regulations.

(C) The service authorized shall commence as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 30 days of the date on which this order issues.

(D) The certificate authorization granted in paragraph (A) above shall be effective contemporaneously with the certificate authorization issued in Phase I of Docket No. CP66-169, *supra*, p. 828.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PENNSYLVANIA ELECTRIC COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, PROJECT NO. 2280

ORDER APPROVING REVISED EXHIBIT L PROJECT DRAWINGS

(Issued May 27, 1966)

On March 11, 1966, Pennsylvania Electric Company and The Cleveland Electric Illuminating Company, licensees for proposed Kinzua Project No. 2280, filed for Commission approval revised Exhibit L drawings for the project, which is a pumped storage development proposed to be located at the Allegheny Government Dam on the Allegheny River in Warren County, Pennsylvania.

The revised Exhibit L drawings were filed pursuant to *Article 42* of the license for the project which requires their approval by the Commission prior to the commencement of construction of any of the project structures. While the drawings filed cover all of the project structures, the licensees desire Commission approval at this time of only those drawings which relate to the Low Head Hydraulic structures located within the Corps' Allegheny Dam reservoir so that construction of such structures can proceed as scheduled by the construction contractors. Our consideration looking towards our approval of the other Exhibit L drawings filed will be deferred until we have received additional information pertaining to designs.

The Low Head Hydraulic structures will be used to withdraw water from the Allegheny Dam reservoir and will be located near the left abutment of the dam. The drawings show that the intake gates will be closer together than as originally contemplated, for economy of construction, and that their location has been changed for better foundation and easier access. Commission staff has reviewed the proposed changes and found them to be satisfactory.

The Office of the Chief of Engineers, Department of the Army, has approved the plans of the project structures affecting navigation insofar as the interest of navigation is concerned, pursuant to Section 4(e) of the Federal Power Act.

The Commission finds:

The following described revised Exhibit L drawings conform to the Commission's Rules and Regulations and should be approved as part of the license for the project, and superseded license Exhibit L, Sheet 6 (FPC No. 2280-29) should be eliminated from the license for the project:

Revised Exhibit L	*F.P.C. No.*	*Title, Kinzua Project*
Sheet 8A--------	2280-41	Low Head Hydraulic Structures—Sheet 1.
Sheet 8B--------	2280-42	Low Head Hydraulic Structures—Sheet 2.

The Commission orders:

The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2280, and the superseded license Exhibit L drawing described in the same finding is hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2203

ORDER APPROVING REVISED EXHIBIT L PROJECT DRAWINGS

(Issued May 31, 1966)

On February 1, 1966, Alabama Power Company, licensee for Project No. 2203, filed for Commission approval revised Exhibit L drawings for the project to be constructed on the Black Warrior River, Alabama, at the Government Holt Lock and Dam.

The Exhibit L drawings are for the powerhouse and intake section to be located at the Government dam, now under construction, and they were filed as required by *Article 47* of the license for the project prior to commencement of their construction. The drawings show project structures comprising the intake section and the integral powerhouse beginning at the spillway section, and the west (right) abutment non-over flow section. Commission staff has reviewed and checked the structures shown on the revised drawings and found them to be adequate.

The Office of the Chief of Engineers, Department of the Army, has approved the plans of the project structures insofar as the interest of navigation is concerned, pursuant to Section 4(e) of the Federal Power Act.

The licensee has advised that the U.S. Corps of Engineers' construction inside the second stage cofferdam may begin in June or July next, and the licensee desires to commence construction of the project structures shown on the drawings at that time.

The Commission finds:

The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the following described superseded license Exhibit L drawings should be eliminated from the license for the project.

Exhibit L (Revision No. 3) Sheet No.	*FPC No.*	*Title*	*Superseding FPC No.*
1	2203–19	General Plan	2203–14
2	2203–20	Powerhouse Section Thru Unit	2203–15
3	2203–21	General Layout-Powerhouse and Non-overflow.	2203–16
4	2203–22	Powerhouse Floor Plan	2203–17
5	2203–23	Powerhouse Longitudinal Section Non-overflow and Parking.	2203–18
6	2203–24	Transverse Section Thru Service Bay and Dam.	---------

The Commission orders:

The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2203, and the superseded license Exhibit L drawings described in the same finding are hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66–6

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1966)

On April 15, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP66–6 a petition to amend the certificate of public convenience and necessity issued in said docket on September 24, 1965, 34 FPC 965, and amended on January 24, 1966, 35 FPC 134, by authorizing the sale of additional quantities of natural gas to Intermountain Gas Company (Intermountain) for resale and distribution in the community of Iona, Idaho, all as more fully set forth in the petition to amend.

The certificate issued on September 24, 1965, and amended on January 24, 1966, authorized, *inter alia*, Petitioner to sell and deliver natural gas to Intermountain for transportation to and resale and distribution in the communities of Rigby, Rexburg, Ucon and Lewisville, Idaho, and their respective environs. Intermountain has now acquired a certificate of public convenience and necessity from the Idaho Public Utilities Commission and a franchise from the Village of Iona authorizing the installation of facilities in and rendition of gas distribution service to Iona.

Petitioner will transport and sell to Intermountain, through Petitioner's existing Idaho Falls Meter Station without enlargement or modification, firm quantities of natural gas for Iona, Idaho, and its environs. The estimated maximum daily and annual requirements of the proposed service area will be 151 Mcf and 16,100 Mcf of natural gas, respectively.

The sale is proposed to be initiated in accordance with and at rates contained in Petitioner's Rate Schedule DI-1, FPC Gas Tariff, Original Volume No. 3.

Petitioner states that if the instant filing is approved prior to approval of Petitioner's application filed July 23, 1965, in Docket No. CP66-27, the service embraced by this petition will be divested by Petitioner to Northwest Pipeline Corporation, otherwise Northwest Pipeline Corporation will be substituted as the petitioner hereunder.

Due notice of the filing of the petition to amend was published in the Federal Register on April 29, 1966 (31 F.R. 6519). No protest, petition to intervene, or notice of intervention has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 24, 1965, and amended on January 24, 1966, be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued in Docket No. CP66-6 on September 24, 1965, and amended on January 24, 1966, is further amended by authorizing Petitioner to sell and deliver up to 151 Mcf of natural gas per day to Intermountain for resale and distribution in the Village of Iona, Idaho, and environs, all as more fully set forth in the petition to amend.

(B) In all other respects the certificate, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HEADWATER BENEFITS DETERMINATION, DESCHUTES RIVER BASIN, DOCKET NO. E-7294

HEADWATER BENEFITS DETERMINATION

(Issued May 31, 1966)

This order, issued under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)), determines that Federal headwater improvements in the Deschutes River Basin in Oregon did not provide benefits to non-Federal downstream hydroelectric developments during the period of January 1, 1940, which was approximately when the first Federal headwater improvement was installed, through December 31, 1965. The Federal headwater improvements are the Crescent Lake, Crane Prairie, Wickiup, Prineville, and Ochoco projects, and the downstream developments are the Portland General Electric Company's Round Butte and Pelton developments, licensed as Project No. 2030, and the Pacific Power & Light Company's unlicensed Bend and Cline Falls developments and its Cove development, Project No. 1447, which was abandoned December 31, 1963, and is now inundated by the Round Butte reservoir.

The hydraulic capacities of the turbines at the Round Butte and Pelton projects are large enough to utilize all but rare instantaneous flows either with or without regulation from the headwater improvements. Thus, with pondage at Pelton and considerable storage at Round Butte, there is no increase in energy attributable to the Federal reservoirs.

Further, the headwater improvements are primarily irrigation reservoirs, constructed or rehabilitated by the Bureau of Reclamation, which store high flows during the months of October through April, the period of each year when the downstream owners' power system needs are greatest. Subsequent irrigation releases are made during May through September, non-critical months, with respect to power needs. Also, the storage capacity in the headwater reservoirs permits greater diversions from the stream for irrigation purposes, which result in larger depletions for consumptive use, and thus, less water is available for generation of power at downstream plants than would be the case in the absence of the upstream storage. In the circumstances, studies for succeeding years will not be made until changed conditions in the basin warrant otherwise.

Because of upstream diversions for irrigation, there are no benefits to the small plants, Bend and Cline Falls. Although some minor benefits may have accrued to Pacific Power & Light Company's Cove project before it was abandoned in 1963, the probable value of such benefits, if any, would not justify the study necessary for an assessment.

The Commission determines:

The United States' Crescent Lake, Crane Prairie, Wickiup, Prineville, and Ochoco headwater improvements did not provide benefits to the Portland General Electric Company's Round Butte and Pelton hydroelectric developments, Project No. 2030, or to the Pacific Power & Light Company's unlicensed Bend and Cline Falls developments or its Cove development, Project No. 1447, during the period of January 1, 1940, through December 31, 1965.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

INTERSTATE POWER COMPANY, DOCKET NO. E-7287

ORDER AUTHORIZING ISSUANCE OF SHORT-TERM PROMISSORY NOTES

(Issued May 31, 1966)

Interstate Power Company (Applicant) a public utility incorporated under the laws of the State of Delaware and domesticated in the States of Illinois, Iowa, Minnesota and South Dakota with its principal place of business at Dubuque, Iowa, filed an application on April 20, 1966, pursuant to Section 204 of the Federal Power Act seeking authority to issue $18,130,000 of unsecured short-term promissory notes of which not more than $16,000,000 will be outstanding at any one time.

Under Section 204(e) of the Federal Power Act, the Applicant has issued nine notes to local banks in the total amount of $2,130,000, dated April 15, 1966, due April 14, 1967, bearing interest at 5½% per annum. Pursuant to a credit agreement, dated April 13, 1966, between two New York City banks, The Chase Manhattan Bank (National Association) and Manufacturers Hanover Trust Company, and the Applicant, the banks will make $16,000,000 short-term funds available to the Applicant. These borrowings are to be evidenced by notes which are to be dated the date of their delivery, they are to mature one year from the date of their delivery, or August 31, 1967, whichever date shall be earlier. The interest rate will be the prime commercial rate of The Chase Manhattan Bank. This rate is now 5½% per annum. Although the $2,130,000 outstanding notes and the $16,000.000 notes permitted under the credit agreement, total $18,130,000, the notes outstanding at any one time will not exceed $16,000,000 for reason that $2,130,000 will be obtained under the credit agreement to pay off the outstanding notes at maturity on April 14, 1967. The application states that the Applicant expects to issue permanent securities in the spring of 1967.

Applicant states that the net proceeds from the issuance of the notes will be used to carry out its 1966 construction program estimated to cost $21,742,000. The principal items in this program are the construction of Applicant's Milton L. Kapp generating plant, Unit No. 2, at Clinton, Iowa, which will require an expenditure of $9.4 million in 1966 and the construction of a 55 mile portion of the 345 kv transmission line from Twin Cities to St. Louis which is expected to cost $1.8 million in 1966.

Written notice of the application has been given to the Illinois Commerce Commission, Iowa State Commerce Commission, Minnesota Railroad and Warehouse Commission, South Dakota Public Utility Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on May 4, 1966 (31 F.R. 6646), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before May 18, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 12, 1959, *In the Matter of Interstate Power Company,* Docket No. E-6877 (21 FPC 678).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,130,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,130,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not

impair its ability to perform that service, and is reasonable, necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,130,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said notes in the amount of $18,130,000 being not later than August 31, 1967.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-141

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1966)

On November 3, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66-141 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the development of an underground natural gas storage reservoir (Loudon Storage Field) in Fayette and Effingham Counties, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate the following natural gas facilities:

(1) Approximately 4.5 miles of 30-inch pipeline to connect Applicant's main transmission system to the Loudon Storage Field;

(2) approximately 6.9 miles of various diameter field gathering pipeline;

(3) a 2,000 BHP compressor station;

(4) gas measurement, purification and other appurtenant facilities.

Applicant also proposes to rework 108 wells and drill 10 exploratory wells. The estimated cost of the proposed development and testing program, including inventory volume and storage rights for the first phase of development, is $17,893,000, which will be financed from funds on hand and from proceeds of interim loans. This includes an initial payment of $4,110,000 to Humble Oil & Refining Company for certain rights and properties now held by Humble in the storage area.

Applicant contemplates a testing program involving the injection of approximately 7,5000,000 Mcf of gas and withdrawals of approximately 1,500,000 Mcf of gas. Further authorization to utilize the proposed storage for customer service will be requested upon completion of the initial development and testing program.

The development and testing program will utilize the Devonian Reservoir. Applicant states that the necessary agreements with the present producer-operator, mineral and royalty owners, and land fee owners have been obtained.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 26, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-996 (20 FPC 694).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as more fully described in the application filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the construction and operation of the facilities, and the transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The proposed development and testing program shall be completed and the transportation of gas authorized in paragraph (A) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 years of the date on which this order is issued.

(D) The certificate issued by paragraph (A) is conditioned upon Applicant's compliance with the following requirements:

(1) The maximum inventory of gas stored in the Loudon Storage area will not exceed 7,500,000 Mcf of natural gas at 14.73 psia without prior authorization of the Commission.

(2) Applicant will submit monthly reports containing the following information on the proposed operations:

(a) The volume of gas injected or withdrawn with the corresponding total volumes in the reservoir;

(b) The maximum daily injection or withdrawal rate experienced during the month;

(c) The average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;

(d) The stabilized shut-in wellhead pressure of each observation and active well when pressure stabilization exists and the water level in each observation well not showing gas;

(e) A map showing the latest concept of structure and the area occupied by the gas bubble. Show, for each well, the date on which gas was first noted during injection and the date on which water encroached during withdrawal;

(f) A tabulation of wells drilled, cleaned or recompleted with subsea depths of formations and casing settings. Copies of any core analyses, back-pressure tests or electric logs;

(g) Monthly reports will continue to be filed until the storage inventory volume has reached or closely approximated the maximum volume permitted in the Commission's order. Thereafter the reports shall be submitted semi-annually for a period of two years.

(3) Within 60 days after the issuance of this order Natural will submit pro forma accounting entries satisfactory to the Commission indicating the applicable accounts to be used to distribute the $17,893,000 of proposed expenditures at the time the subject facilities are completed and placed in service.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF PASADENA, CALIFORNIA, PROJECT NO. 1250

ORDER GRANTING EXEMPTION FROM PAYMENT OF ANNUAL CHARGES

(Issued May 31, 1966)

Application was filed on March 21, 1966 by the City of Pasadena, California, licensee for Project No. 1250, for exemption from payment of the net amount of annual charges under the license for the project for the calendar year ended December 31, 1965, pursuant to the provisions of Section 10(e) of the Federal Power Act (Act) and Regulations of the Commission thereunder, on the ground that the balance of the project power not used for municipal purposes was sold to the public without profit.

The statement of annual charges rendered by the Commission for the year involved amounted to $175.10. The application sets forth that the project operations for the year 1965 resulted in a net loss, and that the project power was sold by the licensee to ultimate consumers without profit.

The Commission finds:

(1) The licensee is a municipality within the meaning of Section 3(7) of the Act, and is entitled to claim exemption from payment of annual charges under Section 10(e) of the Act.

(2) The licensee is entitled to exemption from payment of the net amount of annual charges for which it was billed for the year 1965.

The Commission orders:

The licensee for Project No. 1250 is hereby exempted from liability under the license for the project for payment of annual charges for which it was billed for the calendar year 1965.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-305

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1966)

On March 24, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP66-305 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-months' period August 7, 1966, through August 6, 1967, and the operation of certain natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission system, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system additional supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 26, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-months' period August 7, 1966, through August 6, 1967, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct during the 12-months' period August 7, 1966, through August 6, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the 12-months' period August 7, 1966, through August 6, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WARREN PETROLEUM CORPORATION (OPERATOR), DOCKET NO. G-20478, ET AL.; CITIES SERVICE GAS COMPANY, DOCKET NO. RP65-21

ORDER RELEASING REFUNDS IN PART

(Issued May 31, 1966)

The Commission by order issued December 30, 1965 in the above-entitled proceedings, 34 FPC 1616, directed Cities Service Gas Company (Gas Company) to file a report of its intended disposition of amounts refundable to Gas Company by Warren Petroleum Corporation, Kerr-McGee Oil Industries, Inc.,[1] and Cities Service Oil Company (WKC). The refunds are the result of the settlement of pending rate proceedings which was approved conditionally by the Commission's order issued June 3, 1965, 33 FPC 1212, as amended August 25, 1965, 34 FPC 587. The order issued June 3, 1965 directed WKC to retain all refundable amounts pending further order of the Commission.

WKC have filed reports indicating that a total of $2,626,301.40 excluding escrow earnings and additional interest, is refundable to Gas Company. Gas Company's report filed March 9, 1966, as amended by letter filed April 27, 1966, shows that, of the amount refundable to Gas Company, $1,796,597.78 is attributable to its jurisdictional sales and $829,703.62 is attributable to its non-jurisdictional sales. Of the amount attributable to its jurisdictional customers, Gas Company proposes to flow-through $1,566,677.13 and proposes to retain $229,920.65.

The amount attributable to jurisdictional customers which Gas Company proposes to retain is made up of two components.

1. For the period September 1, 1961 through December 22, 1961, Gas Company will flow-through amounts attributable to sales under its I Rate Schedule, but contends that it is not obligated to flow-through the amounts (aggregating $170,918.17) attributable to sales made under its F, C, and P Rate Schedules during this period.

2. Each of Gas Company's suppliers involved in these proceedings made two rate increases, one to 16.8 cents per Mcf and one to 17.9 cents per Mcf. Gas Company contends that it has no flow-through obligation for the period prior to April 23, 1964 with respect to the increases to 17.9 cents per Mcf. The amounts refundable by WKC representing the difference between 16.8 cents and 17.9 cents for the periods prior to April 23, 1964 aggregate $59,002.48.

Generally stated, it is Gas Company's position that the $229,920.65 ($170,918.17 plus $59,002.48) represents refunds of rate increases by its suppliers which it absorbed and did not pass on to its customers.

We have heretofore announced our policy that refunds should be flowed-through to the extent of our jurisdictional reach. *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, 52. In furtherance of that policy and pending a proper showing by Gas Company that it is legally and equitably entitled to the amounts attributable to jurisdictional sales which it claims it is not obligated to flow-through, it is necessary and appropriate that such amounts continue to be retained by WKC as hereinafter provided. We emphasize that we are not now passing judgment on the merits of Gas Company's claim. *Texas Eastern Transmission Corporation*, Docket No. RP66-12, order issued October 4, 1965, 34 FPC 1099.

The Commission orders:

(A) WKC are each directed to release and pay over to Gas Company within 45 days after the date of this order the amounts shown in the reports filed by WKC pursuant to paragraph (C) of the order issued June 3, 1965, together with the net escrow earnings or interest (as the case may be) attributable to such amounts, *except that,* WKC shall retain the following amounts together with the associated escrow earnings or interest.

1. The amounts of $52,007.76 (Warren Petroleum Corporation) $5,466.76 (Kerr-McGee Corporation), and $113,443.65 (Cities Service Oil Company) which

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[1] This company is now Kerr-McGee Corporation. See order issued January 17, 1966 in Docket No. G-2755, *et al.*

are attributable to purchases by Gas Company during the period from September 1, 1961 through December 22, 1961.

2. That portion of the refunds which is attributable to purchases by Gas Company prior to April 23, 1964 and which represents the difference between a rate of 16.8 cents per Mcf at 14.65 psia and the rate collected subject to refund in excess of that rate.

(B) Within 60 days after the date of this order, WKC shall each file a report showing the amounts paid to Gas Company and the amounts not herein released. The principal sums (principal and interest before June 3, 1965) and escrow earnings or interest since July 15, 1965 shall be separately stated.

(C) With respect to amounts received by Gas Company pursuant to paragraph (A) above which are attributable to the period September 1, 1961 through December 22, 1961, Gas Company shall refund to customers purchasing under its I Rate Schedule the amounts (plus allocable escrow earnings or interest) of $25,447.07 (Warren Petroleum Corporation), $2,674.85 (Kerr-McGee Corporation), and $55,507.28 (Cities Service Oil Company), as shown in Gas Company's report filed March 9, 1966.

(D) Subject to the provisions of paragraph (C) above, Gas Company shall flow-through amounts received from WKC in accordance with relevant provisions of its settlement agreements in Docket Nos. RP62-1 and RP64-9, and shall submit a report showing the details of its refund to the Commission within 15 days after the refund is made.

(E) Pending further order of the Commission, WKC shall retain all remaining refundable amounts in accordance with paragraphs (D) and (E) or (F) of the order issued June 3, 1965.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

YALE GAS COMPANY, INC. AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP66-273

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 31, 1966)

On February 21, 1966, Yale Gas Company, Inc. (Applicant) filed in Docket No. CP66-273 an application, as supplemented on April 22, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in the Community of Yale, Oklahoma, all as more fully set forth in the application in this proceeding.

Applicant states that it is an established utility serving Yale and that it requests herein service from Respondent because of the depleting supply of local natural gas. Further, Applicant states that natural gas service from Respondent will secure a dependable and permanent supply of gas for continued resale and distribution by Applicant in Yale.

Applicant proposes to construct approximately 100 feet of 4-inch pipe connecting Respondent's Payne County pipeline to Applicant's existing facilities. The cost of the proposed connecting line is estimated to be between $300 and $400.

Applicant's estimated third year annual and average peak day requirements are 132,732 Mcf and 690 Mcf, respectively.

Natural gas service to Applicant will be rendered under Respondent's FPC Gas Rate Schedule F-1.

On March 11, 1966, Respondent filed an answer stating that it has no objection to the granting of the subject application.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 9, 1966 (31 F.R. 4178). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicant, Yale Gas Company, Inc., is a public utility organized and existing under the laws of the State of Oklahoma and is authorized to construct and operate natural gas facilities and to engage in the distribution of natural gas in the Community of Yale.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant under a service agreement to be executed by Applicant and Respondent, in accordance with the Commission's Regulations, for resale and distribution as hereinbefore described. The sale of natural gas hereinafter directed should be made pursuant to Respondent's FPC Gas Rate Schedule F-1.

(4) The requirement that Respondent serve Applicant as hereinafter ordered will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Yale within one year from the date of issuance of this order.

The Commission orders:

(A) Cities Service Gas Company is directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver natural gas under a service agreement to be executed by Applicant with Respondent, in accordance with the Commission's Regulations, for resale and distribution as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding. Such service shall be rendered pursuant to Respondent's FPC Gas Rate Schedule F-1.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WILLIAM E. PORTMAN, DOCKET NO. CI66-880 AND J. M. KESSLER,[1] DOCKET NO. CI66-893

DECLARATORY ORDER WITH RESPECT TO COVERAGE UNDER RATE SCHEDULE

(Issued June 1, 1966)

Petitioners on March 22 and 23, 1966 severally filed herein petitions for a declaratory order, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, requesting the Commission to determine that their interests in the jurisdictional sales of natural gas from the following described wells in the Guymon Hugoton Gas Field in Texas County, Oklahoma to Northern Natural Gas Company (Northern) by Hugoton Plains Gas & Oil Company (Hugoton) were covered by Hugoton's FPC Gas Rate Schedule No. 1, particularly Supplement No. 15 thereto:

Petitioners	*Well description*
William E. Portman	(1) Mayer #1 Gas Unit, Section 33-T5N-R17ECM. (2) Wiggains #1 Gas Unit, Section 27-T5N-R17ECM. (3) D. Compton #1 Gas Unit, Section 25-T6N-R18ECM. (4) I. H. Lutes #1 Gas Unit, Section 26-T6N-R18ECM.
J. M. Kessler	(1) Mayer #1 Gas Unit, Section 33-T5N-R17ECM. (2) Wiggains #1 Gas Unit, Section 27-T5N-R17ECM.

Supplement No. 15 contained the 15.75¢ per Mcf settlement rate approved by the Commission in Docket No. RI60-102 by order issued October 8, 1963, 30 FPC 973, for Hugoton's sales to Northern. Petitioners indicate that Hugoton has taken the position that there is doubt as to whether it can lawfully make payments to Respondents on the basis of the 15.75¢ per Mcf settlement rate which Hugoton collected from Northern from and after April 7, 1960 (less 1.12¢ per Mcf for the entire periods involved here and less 1.0¢ per Mcf compression charge after September 3, 1961) in accordance with Respondents' contracts with Hugoton. Petitioners seek to collect the difference between their contract rate of 8.26 cents per Mcf prior to April 7, 1960 and the adjusted amount of the settlement rate provided for under their contracts since that time. They claim their sales were covered by Hugoton's filings under Hugoton's FPC Gas Rate Schedule No. 1. Petitioners further state that they always received payments from Hugoton on the basis of Hugoton's filings under said rate schedule until the settlement rate was approved in Docket No. RI60-102. Petitioners also cite the Commission's declaratory order issued April 13, 1965 in *Panhandle Eastern Pipe Line Company*, Docket No. CI65-858, 33 FPC 728, where it was determined under circumstances similar to those presented here that Panhandle's sale was covered under Hugoton's FPC Gas Rate Schedule No. 1.

Petitioner Portman indicates that MAPCO Production Company (MAPCO) successor in interest to Hugoton as of February 1, 1965, recognized that he was covered by Hugoton's filing because of the rationale in the *Panhandle* order, and that MAPCO paid him the adjusted settlement rate from February 1, 1965. Portman therefore seeks here only its contract rate for the period prior to February 1, 1965.

Petitioner Kessler seeks its contract rate only for the period prior to January 23, 1962. T.E.L. on January 23, 1962 purchased Kessler's interests in the subject sales. T.E.L. filed for a certificate which was issued on July 23, 1965 in Docket No. CI65–943 at a rate of 14.63334¢ per Mcf, subject to the applicable deduction for compression. The effective date of this rate is January 23, 1962, the date T.E.L. acquired its interest. Hugoton paid T.E.L. at the higher rate from January 23, 1962 until February 1, 1965, but did not pay the higher rate to Kessler for the period from April 7, 1960 until January 23, 1962.

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[1] On January 23, 1962, T.E.L. Oil and Gas Corporation (T.E.L.) became the successor in interest.

In our aforementioned *Panhandle* order, we held that although Hugoton's FPC Gas Rate Schedule No. 1 does not specifically refer to Panhandle's interest it covered Panhandle's interest. In the instant proceedings, we likewise find that Petitioners' interests were covered by Hugoton's filings under such rate schedule in view of Hugoton's prior practice of making payments to Petitioners on the basis of its own rate filings. It is also important that Portman never sought certification or filed his own rate schedule. We believe that Portman's said interest was covered by Hugoton's FPC Gas Rate Schedule No. 1. Kessler likewise considered that this interest was covered by Hugoton's filings, and we conclude that such interest was covered by Hugoton's filings under Hugoton's FPC Gas Rate Schedule No. 1 until January 23, 1962.

The Commission orders:

For the foregoing reasons we determine that Portman's interests in the above-designated properties were covered under Hugoton's FPC Gas Rate Schedule No. 1; and that Kessler's interests in the above-designated properties were covered under Hugoton's FPC Gas Rate Schedule No. 1 until January 23, 1962.

OPINION NO. 492

SKELLY OIL COMPANY, DOCKET NO. G–18638; GLEN A. MARTIN, G–18639; TENNECO OIL COMPANY, G–18765; GEORGE H. COATES, OPERATOR, ET AL., G–18938; GEORGE H. COATES, ET AL., CI61–178; CONTINENTAL OIL COMPANY, CI60–71; MOKEEN OIL COMPANY, ET AL., CI60–789; SOHIO OIL COMPANY, CI61–77, CI61–79; COASTAL STATES GAS PRODUCING COMPANY, CI61–471, CI61–472; RUSSELL MAGUIRE, ET AL., CI61–530; MORGAN MINERALS CORPORATION, CI61–648.

OPINION AND ORDER REQUIRING REFUNDS

(Issued June 1, 1966) [*]

Syllabus

1. **It is now established that Commission has both power and duty to require refunds of amounts collected in excess of "in-line" price absent a factual showing demonstrating inequity of such requirement in whole or in part. P. 852.**
2. **Argument that Commission has no power to require refunds where temporary certificates contained no refund provisions, and other related arguments, have been disposed of by Circuit Court of Appeals and will not avail to prevent ordering of refunds. P. 852.**
3. **In reaching this result (*supra* 2), Commission *notes* that overriding purpose of Natural Gas Act is protection of gas consuming public. P. 853.**
4. **Refund sums represent money Commission has determined should have been retained by consumers under proper initial rates required by public**

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[*] Amended and confirmed by Opinion No. 492–A issued July 21, 1966, 36 FPC 143.

convenience and necessity—had proper rates been established in temporary authorizations, such sums would not have come into existence. P. 853.

5. Clearly stability and finality are desirable goals in producer regulation; temporary authorizations are not and could never be vehicle for assuring such stability. P. 853.
6. Considering judicially ratified finding that 15 cents is proper here, a solid equitable showing that no refunds should be made would be required. P. 853.
7. Producers here were on notice that price granted in temporary authorization was merely interim. P. 853.
8. Reasonable reliance upon supposedly firm price granted by Commission is a matter to be considered in weighing the equities; it is essential to any producer's claim that he not be compelled to refund. P. 854.
9. Refunds should be required except to extent producer shows both (1) that he paid monies which would not have been paid out had he not relied reasonably and in good faith on Commission's order and (2) that such monies cannot be recouped [either as a matter of law or practical matter] or while recoupment might be had, expense thereof would be disproportionate to amount to be removed. P. 854.
10. Producer need not refund that portion of any state production tax attributable to excess amounts collected to extent such taxes cannot now be recouped. P. 854.
11. Producer should refund that portion of excess amounts collected which was not paid out on taxes and royalties and that portion of taxes paid which can be recouped. P. 854.
12. Argument that those to whom refunds are made have failed to pass refunded amounts to consumers is not a ground on which producers may avoid refund obligation. PP. 854, 855.
13. Distributors are within control of local state regulating agencies and these agencies are responsible for seeing that refund benefits reach proper parties. P. 855.
14. Contention that it is inequitable to require refunds of any part of price of gas produced from a lease that has been a losing proposition to particular producer cannot be sustained. P. 855.
15. It is recognized that although company as a whole may be conducting a loss operation there is no reason why refunds should not be ordered of amounts in excess of in-line price; same principle applies where loss is incurred in connection with particular producing property, whether or not there is a loss on company-wide basis. P. 855.
16. Possible refunds arising from a certificate case should not be deferred until just and reasonable rates are determined. P. 855.
17. *Permian* does not support complete forgiveness of responsibility of small producers to make refunds. P. 855.
18. Successor stockholders must take possibility of loss as well as possibility of undisclosed profits when succeeding to interest of prior stockholders and therefore cannot avoid refunds. P. 856.
19. Accounting expense here does not appear so great as to be a ground for avoiding refunds. P. 856.
20. All amounts collected in excess of 15 cents per Mcf are to be refunded with exception of (1) amounts attributable to such excess and paid out in royalty or overriding royalty payments and (2) amounts so attributable paid out in state production taxes which cannot be recovered by way of credit or otherwise. P. 856.

21. Interest will be required at usual rates on amounts to be refunded to extent such amounts were retained by producer or used for his benefit—no interest will be required to extent refunds include recoupable overpayment of production taxes, unless refunds are delayed beyond time refunds must be made. P. 857.
22. There is no inequity in requiring producer to refund excessive amounts collected at a time when he was on notice that rate allowed in specified order was subject to revision as result of granting rehearing. P. 857.
23. In a proceeding under Section 7 of the Natural Gas Act, Commission *requires* refunds of excess amounts collected under temporary authorizations, containing no refund conditions.

Commissioner O'Connor *concurring* in part; *dissenting* in part.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

By our Order and Opinion No. 362, issued August 30, 1962, 28 FPC 401, we granted fifteen permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act to thirteen producers for sales of natural gas in Texas Railroad Commission District No. 4. These certificates were conditioned upon initial prices of 15 cents per Mcf.

Twelve of the producers, involved in fourteen of the fifteen dockets, had charged and collected rates in excess of the "in-line" price of 15 cents per Mcf while making sales under the temporary certificates.[1] We did not order refunds of the excess collected because the temporary certificates contained no refund conditions.

On appeals by intervenors The United Gas Improvement Company, Long Island Lighting Company, and Public Service Commission of the State of New York, the Court of Appeals for the District of Columbia held that the power to order refunds did not depend upon an explicit refund provision in the temporary authorizations. That power, the court declared, "resides in the Commission when it grants a permanent certificate. To hold that it may not then require refund of excessive prices previously permitted without notice or hearing or mature consideration, since the Commission acted on an emergency basis, would be inconsistent with the regulatory responsibility of the Commission to aid in the ascertainment and authorization of just and reasonable rates" (329 F. 2d 242, 249). The court in part bases the foregoing conclusions on the general language inserted in all temporary certificates to the effect that:

> This acceptance for filing shall not be construed as constituting approval of any rate * * * contained in the rate filing; * * * and such acceptance is without prejudice to any findings or orders which may be made in the final disposition of this proceeding * * * etc. * * * but such authorization and acceptance of the rate schedule are without prejudice to such final disposition of the certificate application as the record may require. * * * (329 F. 2d 242, 249).

The court remanded the case to the Commission for further consideration of the refund question in the light of the court's opinion, declaring "There must be, with the assistance of the parties, a broader and more penetrating analysis and consideration of the factors pro and con a refund, and its amount or extent in arriving at an equitable conclusion."

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[1] The cases of two producers, *Jake L. Hamon*, CI61-930, and *Sunray DX Oil Company*, CI60-428, have since been settled. The case of *Glen A. Martin, et al.* (Martin), Docket No. G-18639, did not involve sales made under a temporary certificate, and will be separately considered later in this opinion.

Petitions for certiorari were denied by the Supreme Court. It is now established that the Commission had both the power and the duty to require refunds of amounts collected in excess of the "in-line" price in the absence of a showing of factual situations which demonstrate that it would be inequitable to require refund of either all or part of the excess amounts collected.[2]

Amerada Petroleum Corporation, et al., Opinion No. 422, 31 FPC 623 (March 23, 1964) we summarized the standard set by the Circuit Court of Appeals in the *Skelly* case as follows:

> The Court also has stated, however, that the existence of the power to order refunds at the time of permanent certifications does not mean that its exercise is mandatory. The standard to be followed is the standard of equity, and the decision as to whether refunds should be ordered is to turn on equitable considerations. The existence of a refund requirement is one such consideration but is not controlling; the public interest factors must also be weighed and may be adequate to offset the absence of an explicit condition. (p. 639)

By order issued February 8, 1966, 35 FPC 207, we permitted all producers who wished to do so to file statements of facts and briefs as to the equities. All but three of the producers involved filed such briefs.[3] No intervenor filed any answering brief.

Certain arguments made by several of the producers have already been disposed of by the decision of the Circuit Court of Appeals, which is now the law of this case. Among these are the contention that the Commission has no power to order refunds of amounts collected under temporary certificates which do not contain refund conditions, the argument that refunds should not be required because the producers had no notice of possible refunds and were lulled by the Commission's statements that refunds would not be ordered, and the argument that the Commission is estopped by its conduct from ordering refunds. All the facts upon which these arguments are based were known to the court at the time of its decision. The fact that financing plans were made on the basis of the reasonable expectation that no refunds would be required is also insufficient to prevent refunds from being ordered. The reliance of the producers upon the alleged firmness of the temporary certificate prices was fully known to the court and it is obvious that the financial planning of the companies involved would have been based to some degree upon their expectations in this regard. The argument that the temporary certificates were accepted in the belief that the prices specified would not be subject to refund, and thereby resulted in an entrapment of the producers, is another fact which is inherent in the situation which was presented to the Court of Appeals. All these arguments, therefore, will not avail to prevent the ordering of refunds.

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[2] After the Supreme Court granted certiorari in the *Callery Properties* case on March 8, 1965, we deferred further action in this proceeding until after the Supreme Court had decided the *Callery* case. On December 7, 1965 the Supreme Court reversed the decision of the Circuit Court of Appeals in the *Callery* case. *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223.

[3] Tenneco Oil Company, Coastal States Producing Company and Russell Maguire, *et al.*, did not file briefs. Sunray DX Oil Company correctly pointed out that its refund liabilities were discharged in a prior settlement. Those filing briefs upon the equities with respect to refund of amounts collected under temporary certificates without refund conditions were George H. Coates, *et al.* and George H. Coates, Operator, *et al.* (Coates), Continental Oil Company (Continental); Mokeen Oil Company, *et al.* (Mokeen); Morgan Minerals Corporation (Morgan); Skelly Oil Company (Skelly); Prado Oil and Gas Company (Prado) (predecessor of Sohio Oil Company).

In reaching this result, we begin with the proposition that the overriding purpose of the Natural Gas Act is the protection of the gas consuming public, as the courts have emphasized time and time again.[4] With this in mind, it is helpful to know just how the sums subject to refund came into existence. The producers here were initially granted temporary authorization to make sales in interstate commerce at the rates they requested. This was done on an *ex parte* basis, and no interested party was given notice or an opportunity to present its views to the Commission. Nevertheless, the temporary authorization granted in each case specifically indicated that it could not be construed as approval of any rate and is granted without prejudice to such final disposition of the certificate application as the record may require. In most of the cases, this expedited treatment was justified on the basis that the producer would otherwise experience an economic hardship of one sort or another. Only two cases posed a threat of loss of gas to the interstate market, in contrast to the interest of a private party.[5] This procedure continued long after it was widely known that certain interested parties, notably the New York Public Service Commission, protested the initiation of any sales from this area at an initial rate of more than 14.6 cents per Mcf.

When it became clear that interested parties had a legal right to participate in the setting of rates at which initial sales were authorized, these applications were set for hearing. Subsequent to the prehearing conference, nearly one-third of the originally consolidated 52 applications were severed and granted permanent certificates at the noncontested rate of 14.6 cents per Mcf and below. The remaining producers continued selling this gas under temporary authority until the proceeding was completed and it was found that the public interest required these sales to be made at an initial rate no higher than 15 cents per Mcf. However, this order was stayed, at the producers request, pending judicial review, and they continued collecting prices in excess of these levels. The court ratified the Commission's 15 cent in line determination and reversed our refusal to order refunds under the temporary authorizations.

Thus, the sums in question represent money which we have determined should have been retained by the consumers under proper initial rates required by the public convenience and necessity. Had proper rates been established in the temporary authorizations, these sums would never have come into being. But, in order to avoid economic hardships to the producers quick action was taken and there was no opportunity to adequately consider the price aspect.

It seems clear that stability and finality are desirable goals in producer regulation. It is equally clear that temporary authorizations are not and could never be a vehicle for assuring such stability by the very method by which they are handled.

Considering our judicially ratified finding that 15 cents is the proper rate at which initial sales should be made, it would require a solid equitable showing that no refunds should be made as the dissent suggests. These producers, similar to several others, could have obtained permanent certificates long ago which would have fixed with finality their initial rates, but they gambled on securing ratification of their higher contract prices and they lost. During this period, they were on notice that the price granted in their temporary authorization was merely interim, as the court has established.

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[4] *F.P.C.* v. *H. L. Hunt*, 376 U.S. 515 (1964); *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961); *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137 (1960); *Atlantic Refining Co. v. P.S.C. of New York*, 360 U.S. 378; *Hope Natural Gas Co.* v. *F.P.C.*, 320 U.S. 591.

[5] The applications in Docket Nos. CI61–657 and CI62–703 were based on allegations of loss of gas through flaring.

This is not to say that reasonable reliance upon a supposedly firm price granted by the Commission is not a matter to be considered in weighing the equities. Indeed, such reasonable reliance is essential to any claim by a producer that he should not be compelled to make refunds. In general, we think refunds should be required except to the extent that a producer shows both (1) that he has paid out monies that would not have been paid out had he not relied reasonably and in good faith upon the Commission's order and statements indicating that no refunds would be ordered, and (2) that the monies so paid out cannot be recouped (either as a matter of law or as a practical matter) or that, while recoupment might be had, the expense of such recoupment would be disproportionate to the amount to be recovered.

The producers generally have alleged only two classes of payments which they contend cannot be recouped, or would entail a disproportionate expense to recoup. These are the payments of those portions of state production taxes or royalties attributable to the amount by which the rates actually collected exceeded 15 cents per Mcf (the in-line price). It has been stated that the owners of many royalty interests are not the same as those to whom payment was previously made, and that the whereabouts or even the identities, in some cases, of former owners would now be difficult to ascertain. Many of these royalty interest owners are farmers or other small land holders. It is stated that the amounts involved would be small in many cases, and that the probable overall expense of recovery of the royalty payments would be greater than the amounts to be recovered.[6]

With respect to state production taxes the issue is less clear. The producers have stated that the recovery of these taxes would be difficult or impossible, but have provided no memoranda of law upon the subject. The Texas law provides "When it shall appear that a taxpayer to whom the provisions of this Chapter (gas tax) shall apply had paid more taxes than were due during any tax-paying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid." (Title 122A, Art. 3.05, par. (2), Vernon's Ann. Civ. St.) Under this provision it would appear that any producer having current production might recoup any over-payment of these taxes, but a producer who no longer had production against which a credit might be applied would be unable to recover production taxes previously paid. Accordingly, the producers need not refund that portion of any state production tax attributable to amounts collected in excess of 15 cents per Mcf to the extent to which taxes so attributable cannot now be recouped by way of credit or otherwise.

The fact that taxes and royalties have been paid in reasonable reliance upon the Commission's prior order and statements and the further fact that some or all of these payments cannot be recouped is no ground for avoiding all refunds. That portion of the excess amounts collected which was not paid out on taxes or royalties, and that portion of taxes paid which can still be recouped, should be refunded.

The producers argue that those to whom refunds are made have failed to pass on to the consumers the amounts of the refunds. Prado states that less than 25 percent of any refunds ordered will reach the consumer and that the main benefits will fall to the commercial utilities and industrial users. This is not a ground on which producers may avoid their refund obligations. We have determined in the past that we will take action "to assure that within the limits of our jurisdictional reach, the refunds ordered actually flow to those parties legally and equitably entitled thereto." *Humble Oil & Refining Company*, 32 FPC 49, 52 (1964). Beyond the limits of our jurisdiction we cannot act. The distributors are within the control of their local state regulating agencies, and it is these agencies who are responsible for seeing that the benefits of these refunds reach the proper parties.

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[6] See the testimony of Witness Kilroy in a similar case. *H. L. Hawkins & H. L. Hawkins, Jr.* (*Operator*), *et al.*, Docket No. G–18077, *et al.*, decided in Opinion No. 475, 34 FPC 897. The witness there testified that his attorneys advised him that the collection of royalty overpayments would cost approximately $50,000 more than would be collected.

Certain producers contend that it is inequitable to require refunds of any part of the price for gas produced from a lease that has been a losing proposition to a particular producer. This contention cannot be sustained.

The Supreme Court in *United Gas Improvement Company* v. *Callery Properties, Inc., supra*, upheld this Commission in refusing to receive cost-of-service evidence for the purpose of establishing an in-line price, and further upheld the Commission in its determination that refunds should be ordered of all amounts collected in excess of an established in-line price without waiting for a determination of the just and reasonable price in an area rate proceeding. The Supreme Court recognized that the fact that a company as a whole may be conducting a loss operation is no reason why refunds should not be ordered of amounts collected in excess of an established in-line price. We think the same principle applies in cases where a loss is incurred in connection with a particular producing property, whether or not there is a loss on a company-wide basis.

Another consideration is whether the timing of any refunds should be delayed until just and reasonable rates are determined. We have consistently required refunds at the earliest practicable time and the courts have affirmed our determinations. Thus, in *Callery*, the Court held:

> The Court of Appeals would delay the payment of the refund until the "just and reasonable" rate could be determined. We have said elsewhere that it is the duty of the Commission, "where refunds are found due, to direct their payment at the earliest possible moment consistent with due process." *Federal Power Commission* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 155. These excessive rates have been collected since 1958; under the circumstances, the Commission was not required to delay this refund further.

The precise question of whether possible refunds arising from a certificate application should be deferred until just and reasonable rates are decided was only recently considered again. Despite the pendency of the *Southern Louisiana* area rate case, it was decided to continue to require refunds in the context of certificate proceedings, rather than await a just and reasonable determination. (*Sohio Petroleum Co.*, Dec. 17, 1965, 34 FPC 1483)

No participant has suggested that small producers as a group be given special treatment respecting the refund issue. In this connection, we note that the small producers in the *Permian Basin* case were required to make refunds down to the price levels established in that proceeding, except for quality adjustments. Thus, the *Permian* decision does not support complete forgiveness of the responsibility of small producers to make refunds, nor are we otherwise convinced that their position is so essentially different as to warrant this relief.

Of course, this does not bar these producers from demonstrating with specificity on rehearing situations in which the payment of part or all of the refunds would create undue hardships or otherwise be inequitable. In such event, the Commission would give fresh consideration to whether or not refunds should be ordered.

Morgan urges that its stock was sold after it had collected the amounts in excess of 15 cents. It argues that to order refunds would place a loss upon the present stockholder whereas the benefits would be retained by the former stockholders. We do not think this is sufficient to avoid a refund. The possibility that succeeding stockholders will bear the cost of what was done under former ownership is inherent in any purchase of a corporate business. Successor stockholders must take the possibility of loss as well as the possibility of undisclosed profit when they succeed to the interest of the prior stockholders.

Mokeen states that its gas leases are owned by 16 separate small investors, that one of the original wells has been abandoned and that all except three producing sands require compressors to deliver at contract pressures. It urges that the investors should not be burdened with the cost of an accounting. It appears to be most greatly concerned with the question of accounting for royalty payments. We have already determined that that part of the excessive rates which was paid out in royalty payments need not be refunded. The remaining accounting expense does not appear as great as to be a ground for avoiding refunds. It must be pointed out that, with two exceptions, Mokeen appears to have produced more gas under its docket than was produced under any other docket in this case. It does not appear that the accounting cost would be a disproportionate burden on the operation.

Procedure

In view of the foregoing, the producers other than Glen A. Martin, *et al.*, will be ordered to file refund computations in accordance with this opinion. All amounts collected in excess of 15 cents per Mcf are to be refunded with the exception of (1) amounts attributable to the excess above 15 cents per Mcf and paid out by the individual producer in royalty or overriding royalty payments and (2) amounts so attributable paid out in state production taxes which cannot now be recovered by way of credit or in any other manner. These refunds computations are to be served upon all intervenors in this proceeding as well as the Commission staff. It does not appear at this time that the amounts involved in connection with taxes and royalty overpayments would justify the expense and delay of a hearing, especially in view of the behest of the Supreme Court in *United Gas Improvement Company* v. *Callery Properties, Inc.*, *supra*, and *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 155 that the payment of refunds should be directed "at the earliest possible moment consistent with due process." In the case before us we have accepted the factual statements of the producers at their face value, and these statements have not been contradicted by any intervenor. Under these circumstances no one will be deprived of due process if the proposed procedure is followed.

Producers, if any, which elect to petition for rehearing, will each have the opportunity to allege any additional facts which, if substantiated, would indicate that specific amounts of money have been paid out and cannot, either in practice or as a matter of law be recovered. The producer should include in his factual statement the precise amounts involved, the persons to whom payment was made, when payment was made and the reasons why recovery cannot be had. If it is claimed that recovery cannot be had as a matter of law the cases or statutes upon which the producer relies should be set forth. In the event the factual statements are accepted by the Commission or found upon hearing to be correct, they may further reduce the refund obligation here established. While it seems unnecessary to constitute a hearing upon the facts so far alleged, if it becomes necessary for a hearing to be held the entire body of facts should be developed, including those alleged with respect to taxes and royalties which we have accepted here because it does not appear that the time and expense of a hearing would be justified merely to establish the facts as to the small sums over which there might be controversy. If hearings are found to be necessary, the producers will be required to establish the facts showing that particular taxes or royalties are in fact not recoupable.

Interest

Interest will be required at the usual rates upon all amounts to be refunded to the extent such amounts were retained by the producer or used for his own benefit. To the extent such amounts were paid to others but are recoverable with interest, the legal rate of interest allowable on such recovery will be required in connection with the refunds ordered. Since it does not appear that interest will be recoverable on amounts paid out for state production taxes, no interest will be required on refunds to the extent such refunds include recoupable overpayment of such taxes, unless such refunds are delayed beyond the time fixed for such refunds to be made.

Glen A. Martin

A different situation obtains with respect to *Glen A. Martin, et al.* (Martin) in Docket No. G-18639. On November 22, 1960, 24 FPC 979, the Commission issued an order granting Martin a permanent certificate at 16 cents per Mcf. Thereafter an application for rehearing was filed by Public Service Commission of the State of New York on December 22, 1960. The Commission granted rehearing on January 19, 1961. In March 1961 Martin commenced delivery of gas. The fact that rehearing was pending put Martin upon notice that the rate of 16 cents per Mcf was subject to change. Martin had no temporary certificate nor was there any determination of the Commission upon which he had a right to rely prior to the issuance of a permanent certificate to him at 15 cents on August 30, 1962. There is certainly no inequity to Martin in requiring him to refund excessive amounts collected by him at a time when he was on notice that the rate allowed in the order of November 22, 1960 was subject to revision as the result of the granting of rehearing.

Martin makes the further contention that the order of August 30, 1962 was a final order which established that there would be no refunds for the period prior to the date of that order in Martin's case. Examination of the order, however, discloses that this is not the fact. The question of refunds for Martin's deliveries prior to the time of that order was never considered. The order is completely silent on this point; it purports to deal only with the price to be set forth in the permanent certificate. By no stretch of the imagination can this be held to be a final order of the Commission that no refunds would be required of Martin. Accordingly, Martin will be required to make refunds of all amounts collected by him in excess of 15 cents per Mcf during the period in question, with interest at seven percent per annum.

The Commission orders:

(A) As a condition of the certificate granted in each of the dockets listed in Appendix A hereto, the certificate holder shall file within 60 days of the effective date of this order a report of the amounts collected by said certificate holder in excess of 15 cents per Mcf at 14.65 psia, less any amount by which payments of royalties and overriding royalties were increased by reason of the difference between 15 cents per Mcf and the rates actually collected, and also less any amounts by which payments of state production taxes, not now recoupable by credit or in any other manner, were increased by reason of said difference. Interest to the date of this order shall be added at the rate of 6 percent per annum on all such excess amounts collected prior to March 1, 1960, and at the rate of 7 percent per annum on all such excess amounts collected on or after March 1, 1960, except that no interest shall be included on refunds to the extent state production taxes, paid but recoupable, are included in such refunds, and interest shall not exceed the legal rate recoverable by the producer on that portion of the amount of any refund which was in fact paid over by the producer, not for his own benefit, to any third party.

(B) Glen A. Martin, *et al.*, in Docket No. G–18639 shall file within 60 days of the effective date of this order a report of the amounts collected by them in excess of 15 cents per Mcf at 14.65 psia. Interest shall be included at the rate of seven percent per annum to the date of this order.

(C) Each report required by ordering paragraphs (A) and (B) shall set forth the amount of refund related to each subject rate schedule, (showing separately the principal and applicable interest, with the reasons for differing rates of interest on different portions of the principal), the basis used for such determination, the period covered and a letter from South Texas Natural Gas Gathering Company agreeing to the correctness of the amounts.

(D) Copies of all filings made pursuant to ordering paragraphs (A) and (B) hereof shall be served at the time of filing upon all participants who within 45 days of the issuance of this order shall so request in writing, and upon South Texas Natural Gas Gathering Company.

(E) Each certificate holder listed in Appendix A hereto, and certificate holder Glen A. Martin, *et al.*, shall retain the amounts shown in the reports required under ordering paragraphs (A) and (B) subject to further order of the Commission directing the disposition of those amounts. If any such certificate holder elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 5½ percent per annum on all funds thus available from the date of the filing of the refund report to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. If the certificate holder elects to deposit the retained refunds in a special escrow account, the certificate holder shall tender for filing on or before the date of the filing of the refund report an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be entered into between the certificate holder and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Certificate holder, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or an agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary of this Commission quarterly, certifying the amount deposited in the trust account for the quarterly period.

Commissioner O'Connor *concurring in part* and *dissenting in part.*

APPENDIX A

Docket No. G-18638, *et al.*

	Docket Nos.
Skelly Oil Company	G-18638
Tenneco Oil Company	G-18765
George H. Coates, Operator, *et al*	G-18938
George H. Coates, *et al*	CI61-178
Continental Oil Company	CI60-71
Mokeen Oil Company, *et al*	CI60-789
Sohio Petroleum Company	CI61-77, CI61-79
Coastal States Gas Producing Company	CI61-471, CI61-472
Russell Maguire, *et al*	CI61-530
Morgan Minerals Corporation	CI61-648

O'CONNOR, *Commissioner, concurring in part* and *dissenting in part:*

The result of the decision rendered today is to clear the Commission's dockets of a most difficult and vexatious matter. As noted in the majority's opinion, compelling problems with regard to our authority in this area resulted in delay over a six-year period. There is no further necessity for withholding decision. Briefs and Fact statements have been requested, and, of the nine producers remaining in this proceeding[1], six have filed briefs and statements. No responses in opposition to the allegations have been received from any intervenor or from Staff. Accepting these statements at face value, as the majority purports, we are in a position to proceed to decision. The particular issue here, the only one remaining in the many in-line determinations of the Commission, involves over 200 outstanding dockets. Only eleven dockets are disposed of today, so that a consolidated hearing of all dockets would be useful. With the understanding that each docket is decided on its own equities, no prejudice accrues to persons who have not yet been heard.

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[1] There are eleven dockets, excluding Glen A. Martin, Docket No. G-18639. The latter docket involves a separate problem, and I concur in its disposition.

The sole issue in this matter is whether, upon a "broad and penetrating analysis of the factors pro and con,"[2] this Commission should exercise its "awesome powers"[3] over the natural gas producing industry to order refunds of certain amounts collected under temporary certificates which were without specific refund conditions, but which were specifically interpreted to require no refunds for "equitable considerations."[4] By the Court's mandate, we must, "with the assistance of the parties," proceed to "enumerate all equitable considerations involved" by a proper exercise of the broad authority lodged with this agency. A thorough explanation is thus required either as to the propriety of our initial determination of this issue, or as to the reasons for our error in excusing refunds under such unconditioned temporaries. It serves no useful purpose to restrict our inquiry by the mere forensic that this matter involves no more than is required in an in-line proceeding. It is much more.

For the reasons discussed below, it is my opinion that recoupment and refund of taxes and royalties should be excused, that further equitable considerations dictate excusing refunds in the small producer dockets here involved, and that, in any event, no refunds should presently be ordered. Such a course of action, while not prescribing refunds now, would constitute the proper decision on the merits within the permissible procedural ambit.

* * * * * * *

At the outset one important point must be clarified. The majority opinion avoids equitable considerations by the clever manipulation of citing court decisions which they would have others believe compel today's refund order. Those decisions are irrelevant to the equities in this matter. Today's order speaks of the necessity to "make immediate refunds," ignoring the requirement that whatever be done be "consistent with due process."[5] The latter requirement has repeatedly been emphasized to call "for fresh reminder that courts must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy has been entrusted * * * ."[6] It is to be hoped this agency still has control of its dockets in order that it determine initially what course of action would be most appropriate.[7] Furthermore, it bears emphasizing, in view of the majority's concern with haste, that this Commission does not usually act with compulsive speed to order refunds. If the majority's postulation be correct, then surely we are required to reconsider unanimous earlier determinations that potential refunds under increased filings need not be decided until area rates are established.[8] There the equities are with deferral. Here, too, the same result is proper because there is nothing before us to permit a proper determination of what amount should, within the parameters of just and reasonable, be refunded.

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[2] *P.S.C.* v. *F.P.C.* (the *Skelly* case), 329 F. 2d 242, 250 (CADC–1964), cert. den., 377 U.S. 963 (1964). It should be noted that the Commission's brief opposing certiorari stated "It is entirely possible, however, that the Commission, after reviewing all pertinent factors, will again reach the conclusion that refunds are inappropriate."

[3] *United Gas Pipe Line Co.* v. *F.P.C.*, 350 F. 2d 689 (CA5–1965); affirming *United Gas Pipe Line Co.*, 31 FPC 1180, cert. granted 383 U.S. 924 (1966).

[4] *Skelly Oil Company*, 28 FPC 401, 412 (1962); see also 1065 at 1069 (on rehearing).

[5] *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 155 (1962).

[6] *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 581 (1940).

[7] Compare the action taken in *Dorchester Gas Producing Co.*, 32 FPC 1339 (1964), aff'd. 353 F. 2d 162 (CA3–1965), cert. den., 383 U.S. 969 (1966).

[8] See, *e.g.*, *Slade Inc.*, 29 FPC 11 (1963).

The majority, however, chooses to disguise this Commission's duty. Thus, the opinion declares, on the substantive argument that refunds should not be required where the producer has not recovered his direct costs assignable to a single lease, that the Supreme Court has already determined this is not equitable, citing *U.G.I.* v. *Callery Properties, Inc.*[9] Unfortunately for the opinion of today, the specific issue was not even before the Court. *Callery* declared that, in determining an in-line price, the Commission is not required to consider company-wide costs. It did not say it would be equitable to ignore direct lease costs. The opinion was directed, not to what evidence the Commission, in its discretion, could consider; instead, it determined that, as a matter of law, cost evidence did not have to be considered. Furthermore, the *Callery* litigation did not involve the broader issue now before us.[10] In *Callery* there were no unconditioned temporaries. In the instant matter the Circuit Court has required a thorough examination of the merits. Since equity means to consider a less restrictive ambit of rights than in the expedient in-line proceeding, the equitable basis for today's opinion cannot reside in precedent.

None of the above settles the problem now before us. Whether there are equitable considerations to support our earlier determination that the producers had the better case in this matter must be decided; however, it cannot be found in the majority opinion where equity has been considered in terms of individual impact, area pricing policies, or other regulatory policies. To the contrary, when the equities are explored in depth, there are substantial considerations in support of our prior determination.

It bears recalling, at this point, what we held before, that there "is no basis for ordering refunds for the period * * * during which the producers were receiving the higher prices unconditionally authorized in their temporary certificates."[11] Or, "The essence of our conclusion on this point is that it would be inequitable to require the producers to make refunds where they were issued temporary certificates in general language * * *.[12] Or, as we stated with regard to reliance, a factor we should consider here, "Movants ignore the fact that producers and pipelines have already acted upon the temporary authority as issued and have undoubtedly expended considerable funds in justifiable reliance thereon."[13] Or, as we further stated, "We would be in a position of having induced the producers to dedicate their gas to interstate market in the absence of conditions, and of then imposing more stringent conditions upon them."[14] In my opinion the Commission had compelling substantive reasons for making these representations.

* * * * * * *

Turning first to the matter of taxes and royalties, when due consideration is given the equities, it is clear no refunds should be required where portions of the amounts here in question are held by third parties. Recoupment from these non-jurisdictional recipients can, in no way, be assured by this Commission. We should recognize the many difficulties inherent in recovering these sums, or of the resultant disruption to third parties in no way involved in the matter before us. In addition, such a rule commends itself for reasons of administrative feasibility.

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[9] 380 U.S. 931 (1965).

[10] It should be emphasized that the producers are not precluded from relitigating the Commission's powers here for the Commission brief opposing certiorari specifically preserved the point.

[11] 28 FPC at 413.

[12] 28 FPC at 1069.

[13] *Amerada Petroleum Corp.*, (order denying motion to impose price conditions in temporary certificates) 29 FPC 218 (1963).

[14] *Ibid.*

Taxes are particularly compelling. The production tax here is but seven percent, and, while small in amount in this matter, it looms large in the social welfare purposes to which it is dedicated. The disruption inherent in its recoupment to state fiscal policy should not be permitted.

Royalty payments also present equities against refund. Non-participating third parties, with no reason to assume a different conclusion, have received sums of significance on an individual basis. Not only would undue disruption be forced upon the royalty owner were recoupment required; in addition, the potential litigation burden on the producer would be justified in but a few cases. Successor royalty owners or funds now held by estates further militate in favor of this equity. Finally, there is no need to add to the burden of administration by requiring recoupment.

To the extent, therefore, the majority would excuse taxes and royalties, I concur in their determination.[15]

* * * * * * *

My fundamental disagreement with the majority order, in addition to their refusal to consider the equities in the guise of judicial precedent, is with their refusal to view this matter as anything other than an in-line proceeding. Unfortunately for their position, it involves considerably more, none of which has been presented to the Court. In no in-line proceeding have we represented that equitable considerations might excuse refunds; in no in-line proceeding have we even considered the equities in ordering refunds; and in no in-line proceeding do we attempt to make a penetrating analysis of the equities. A facile abandonment of an earlier determination is seldom warranted. Here we have ordered briefs and pleadings on the issue, with no apparent limitation on what might be considered equitable. Based upon these briefs we should go beyond the limited evidence relied upon in an in-line proceeding.

Some background here is helpful.

At the end of 1960, this Commission was able to formulate for the first time what was to become a relatively concise program for the regulation of independent producers.[16] It has proven acceptable.[17] Plagued during most of the previous decade with the monumental task of regulating independent producers, the Commission was confronted with an Executive Advisory Committee recommending very limited regulation,[18] with long congressional hearings, supported by the Commission,[19] with approval by Congress of the legislation.[20] Following veto for reasons unassociated with the merits of the bill,[21] there were continued congressional efforts at reconsideration with severe budgetary limitations upon the Commission's powers. In addition, under apparent judicial compulsion,[22] the Commission was attempting to determine individual company costs for regulatory purposes, an approach which was ultimately to be rejected. At the same time the Commission was evolving a method of regulation relying upon market prices.[23] To summarize, during a good part of the decade there was considerable uncertainty as to how to proceed. With area regulation inaugurated in 1960, further long delays were foreseeable, and the industry was confronted with severe impacts upon its ability to plan financially for the long interim period. It was, in part, to assuage this uncertainty that every effort was made by the Commission to indicate some assurances to the producing industry that it could rely upon our actions. The importance of this effort cannot be downgraded. Our representations as to unconditioned temporaries were part of this overall picture, and, at least, up until the new departures intimated today, stability of prices for temporary authorizations continued to be accepted policy. In our recent area rate decision, we repeatedly emphasized price control and price stability.[24] It has been an accepted and necessary part of producer regulation. Reliance is one equity not precluded by the Court here,[25] although the majority indicates no interest in the matter.

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[15] I note my specific dissent from the majority's ambivalence on the matter of excusing taxes paid.

[16] Statement of General Policy No. 61–1, 24 FPC 818 (1960).

[17] *Area Rate Proceeding (Permian Basin)*, 34 FPC 159 (Opinion No. 468, issued August 5, 1965) ; *appeal docketed*, CA10, Nos. 8385, *et al.*

[18] U. S. President's Advisory Committee on Energy Supplies and Resources Report issued February 28, 1955.

[19] Letter of the Federal Power Commission to Honorable Warren G. Magnuson, Chairman, Senate Committee on Interstate and Foreign Commerce, dated March 30, 1955.

[20] H.R. 6645, 84th Cong. 1956 (approved February 6, 1956).

[21] H.R. 6645 was vetoed by the President on February 17, 1956, because of "arrogant lobbying," in a few instances.

[22] See, *e.g.*, *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC–1955), cert. den. 352 U.S. 829 (1956).

Furthermore, during the period up until last August, we did not know what the revenue requirements of the industry were. The reasonable market prices could easily be determined, as numerous in-line cases established. At the present, however, we know costs are not out of line with markets.[26] We know that during most of the last two decades the possibility exists that producers were not even recovering their costs, as was clearly established for one major producing area of the nation.[27] For this reason, where the equities are in balance, the better approach is to defer refunds until cost certainty can attach to our actions.

This background requires we not order refunds where the individual impact would be too great. It is part of the equitable consideration. It is part of the reliance we can, and should, consider here. It is part of the arguments which have been presented to us in this proceeding without response. It is to the effect that so far as individual equities are concerned, no refunds are required. If the pleadings here are accepted at face value certain equities are obvious.

First, the producers in six of the eleven dockets here before us are small producers.[28] Their unchallenged allegations indicate costs have not been recovered. Their argument for separate consideration is fully supported by the policy for the Permian Basin.[29] There small producers are largely exempted from the regulatory burden. They are not required to make quality adjustments, even though the difference appears to be at least two million dollars per year for the future, with a much larger potential refund excused. We there emphasized the equities with the small producers,[30] and indicated such persons should be freed from many filing requirements as well as many rate reduction considerations. The same reasons for excusing refunds, particularly the allegedly heavy accounting burden, should apply here.

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[23] Statement of General Policy, *supra*.

[24] *Area Rate Proceeding*, *supra*, at p. 188.

[25] See also *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 270 F. 2d 404 (CA10–1959), where the court there required "such certainty as to allow the exercise of choice upon [the producers'] part."

[26] Compare Permian Basin guidelines of 16.0 cents and 11.0 cents, with area rates of 16.5 cents and 14.5 cents.

[27] In the *Area Rate Proceeding*, *supra*, average revenues for flowing gas in 1960 of 12.7 cents should be compared with costs for flowing gas of 14.5 cents. Economic costs for new gas-well gas were considerably higher.

[28] Based on volumes reported in F.P.C., Sales by Producers of Natural Gas to Natural Gas Pipeline Companies 1963.

Contrary to the majority opinion, which purports to know of no suggestion of special treatment for small producers, the following allegations are clear: "Equity does not permit the exaction of refunds from a small producer in these circumstances * * *" [Brief of George H. Coates, at pp. 4–5]. And: "[It] would be an extreme injustice * * * for a very small operator who has no staff of accountants * * * to make the required refunds." [Brief of Mokeen Oil Co., at p. 6]. Special treatment because of size has been suggested by these participants. The majority's oversight underscores the propriety of a consolidated hearing on the refund issue in order that the issues be fully explored.

The necessity to the small producer of the temporary certificate is far more compelling than it is to the large producer. The large producer can often take emergency sales into a relatively extensive nonjurisdictional system, including refinery, recycling, gathering, or intrastate sale operations, or he can at least better afford the payments required in the absence of production. The small producer cannot do this. He is the person who most needs the temporary, and he is the person who most needs a firm price. In large measure, our representations were most important to him. It is significant that two-thirds of the producers here are small producers. In addition, it is clear the small producer performs an extremely useful function for the entire industry. As the person best situated to take full advantage of exploration incentives, he is most useful to the larger producers in sharing the risks, particularly for the marginal development or for wildcatting.

These equities are compelling. They are made conclusive, to my mind, by the arguments and allegations alleged herein. Thus, of the small producers here consolidated, all allege peculiar operating circumstances which compel their being excused. Virtually all indicate no notice was had of potential refund. One has incurred great costs in developing the particular volumes committed to interstate commerce. Another two have gone out of the business completely, with records lost and liability uncertain. One owes less than $1500 in refunds. The others variously allege important operating considerations and financial impact on their limited reserves if refunds be ordered. Commensurate with our earlier decision in this docket and with our decision in *Permian* we should excuse the refunds here in question.

But the inquiry is not ended. Forced as the majority view themselves to order refunds now, and based upon the briefs filed in this matter, we should set up an exemption procedure for the producers in this docket who have not recovered the on-lease costs. At least one producer here makes this allegation. We have no basis for assuming his costs on that lease have not been recovered. Rather, if we accept the allegation at face value, we must assume he is correct. We have a reasonable basis for proceeding without becoming enmeshed in the individual company cost proceeding. The regulation under certificate authority extends almost solely to particular sales. It involves no more than individual leases. Where the producer does not recover his costs at that lease, which costs are readily ascertainable from various required reports, then equitable considerations compel his being excused. The showing must be made by him. In view of our prior determination, it is the preferred manner of according to the parties the opportunity for a thorough examination as required by the mandate here.

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[29] *Area Rate Proceeding, supra,* at pp. 234–236.

[30] Citing with approval from Examiner Wenner's discussion in his intermediate decision at pp. 328, 329.

The following procedure is the most equitable resolution of the issue before us: First, all taxes and royalties should be excused. Second, the small producer should be excused. Third, any producer who can show that his lease costs for the sale covered by his certificate here docketed have not been or are not being recovered, should be excused. Fourth, since the docket of the producers involve minimal amounts, it would be preferable to excuse them also; nevertheless, the most equitable alternative is to delay refunds until the just and reasonable rate design for the pricing area here is determined, which determination is probable within a relatively short period.

This procedure is entirely commensurate with our handling of increased rate filings. It permits of a thorough reconciliation of the equities which are with the producers. It represents an accommodation to the likelihood the industry may not be recovering its just costs. It avoids individual company cost cases completely. It is within the Commission's authority to control its docket. It represents a determination of how this specific matter, presently pending on review of other dockets in numerous courts, is to be handled. While recognizing the possibility of the equities of consumers and others, it also protects the producers in their interest in using the small amounts here subject to refund to explore for and develop the reserves which are continually necessary. So far as balancing equities are concerned, since over 60 percent of the amounts here involved are used for exploration and development,[31] the small benefit to the consumer resulting from refunds of the small amounts here[32] is far outweighed by the necessity for continuing stable exploration programs.

It is noteworthy here that this Commission has stabilized prices for the consumer. We are not required to rend asunder our prior representations in order to provide a possible windfall to consumers or others at the expense of a similar price stability for the producer. Instead, what is ordered today is an exercise of a refund bias, in disregard of our duty in the matter to consider all the equities. In effect, it represents a one-way exercise of our authority. There is no equity in so proceeding with regard to the most important single item of our regulatory effort. A producer may realize great variations in revenues, even with a firm price, because of numerous negotiated terms and conditions of service, which this Commission does not consider. By upsetting the price, particularly after we had promised it could be relied upon, we subject him to vagaries too great to support reversal of that position for *ex post facto* appropriation of his resources without benefit of full consideration of his equities.

For these reasons, I dissent from the majority opinion's substantive determinations issued this day, concurring only with their excusing, to the extent they may so determine, taxes and royalties.

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[31] The cost analysis in the *Area Rate Proceeding, supra,* at p. 192, indicates exploration and development costs of 10.76 cents, where total cost are 16.5 cents.

[32] The potential refund approximates $150,000, an amount of less than three ten-thousandths of one percent of the price paid by consumers. The potential refund to consumers would be eight thousandths of a cent. As a matter of equity, on balance, the far greater individual impact on the producers here consolidated compels deferral to compare the area rates with the industry's overall revenue expectations, rather than commencing individual company cost investigations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE-TEXAN OIL COMPANY, DOCKET NO. G-16867; TIDEWATER OIL COMPANY, DOCKET NO. G-16908

ORDER TO SHOW CAUSE

(Issued June 1, 1966) *

The question involved is the same as that presented in *Skelly Oil Company, et al.*, Opinion No. 492, issued this day, *supra* p. 849. The two producers in the instant proceeding were issued temporary certificates at 18.2304 cents per Mcf. These temporary certificates contained no refund conditions. Thereafter by order dated April 22, 1963, 29 FPC 784, the Commission issued permanent certificates to these producers conditioned upon an initial price of 15 cents per Mcf. The Commission order did not require the two producers to make refunds of the amounts collected by them in excess of 15 cents per Mcf during the period when the temporary certificates were in effect. After appeal by Public Service Commission of the State of New York to the United States Court of Appeals for the District of Columbia, a stipulation was entered into by joint motion filed in that court September 26, 1963, providing that the disposition of the case should be governed by the disposition in the *Skelly* case. After the Court of Appeals had reached its decision in the *Skelly* case,[1] the court entered an order on February 11, 1964 that the present case be remanded to the Commission for proceedings consistent with the opinion of the Court of Appeals in *Skelly*. Certiorari was denied by the Supreme Court at the same time certiorari was denied in the *Skelly* case.

We know of no reason why a disposition should not be made of the remaining two dockets in this proceeding in the same manner as the dockets involved in *Skelly Oil Company, et al.*, Opinion No. 492. We think that the proceeding can be expedited by requiring the two producers to show cause why an order should not issue requiring them to file refund computations in accordance with the principles set forth in Opinion No. 492. The producers here involved will have the opportunity of course, to show that the facts in one or both dockets differ from those in the dockets dealt with in Opinion No. 492.

In view of the foregoing it is necessary and appropriate for the purpose of administering the Natural Gas Act that the parties listed in the caption be required to show cause, if there be any, why they should not be required to file refund computations in accordance with the principles set out in Opinion No. 492, and thereafter to make refunds to the extent indicated by such refund computations and in the same manner as provided in Opinion No. 492.

The Commission orders:

(A) Tennessee-Texan Oil Company, in Docket No. G-16867 and Tidewater Oil Company, in Docket No. G-16908 shall show cause, if there be any, in writing, within 60 days of the issuance of this order, why they should not be ordered to file refund computations in accordance with the principles set forth in Opinion No. 492, issued this day, and to make the refunds shown to be due in the manner provided in Opinion No. 492.

(B) Further procedures will be established by subsequent orders of the Commission herein. Service of any and all documents filed by Tennessee-Texan

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*Order issued July 21, 1966, denying motion to vacate or stay, 36 FPC 146.

[1] *Public Service Commission of State of New York v. F.P.C.*, 329 F. 2d 242, cert. den. 377 U.S. 963.

Oil Company and Tidewater Oil Company in response to this order to show cause shall be made upon all intervenors in this proceeding, upon United Gas Pipe Line Company, and upon the Commission staff.

Commissioner O'Connor disagreed with the show cause order to the extent inconsistent with his separate views in *Skelly Oil Company, et al.*, Docket No. G-18638, *et al.*, Opinion No. 492 issued this day, *supra*, p. 859.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP66-77 AND CP66-167

ORDER GRANTING CONDITIONAL WITHDRAWAL OF APPLICATION, CONDITIONAL WITHDRAWAL OF OPPOSITION AND PETITION TO AMEND

(Issued June 1, 1966)

On September 17, 1965, Texas Eastern Transmission Corporation (Texas Eastern), filed in Docket No. CP66-77 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of 6,000 Mcf/d of Winter Service gas to United Gas Improvement Company (UGI), and the increase by 920 Mcf/d of its sales to York County Gas Company (York). Petitions to intervene were filed by The Manufacturers Light and Heat Company (in opposition) on October 20, 1965, and by UGI (in support) on October 29, 1965. By order issued December 13, 1965, the Commission granted these petitions to intervene and set April 19, 1966, for a prehearing conference.

On November 29, 1965, Texas Eastern filed in Docket No. CP66-167 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of 6,000 Mcf/d of Winter Service gas to Manufacturers for a one year period commencing on the date of such authorization, which application was granted by the Commission on December 16, 1965. The application in Docket No. CP66-167 followed a prehearing conference held on November 22, 1965, at which the above-named parties and Staff agreed to a settlement whereby Texas Eastern would sell 6,000 Mcf/d of Winter Service gas to Manufacturers, which would, in turn, sell 6,000 Mcf/d of Winter Service gas to UGI.

By order of the Presiding Examiner issued April 15, 1966, the prehearing conference in Docket No. CP66-77 was postponed to May 3, 1966. On May 3, 1966, the prehearing conference convened, at which time Texas Eastern filed in Docket No. CP66-77 a conditional withdrawal of its application, and Manufacturers filed in that Docket a conditional withdrawal of its opposition. Both filings were expressly conditioned on the Commission's authorization of Texas Eastern's petition to amend its application in Docket No. CP66-167 to extend its temporary authorization of one year for a 20-year period commencing December 16, 1965. The result of these filings is that: (a) Texas Eastern has withdrawn its application in Docket No. CP66-77 to serve UGI directly; (b) Manufacturers has withdrawn its opposition to Texas Eastern's application in Docket No. CP66-77 to serve UGI and York; and (c) Texas Eastern has petitioned the Commission to extend for a period of twenty years the one year authorization granted in Docket No. CP66-167. Accordingly, Manufacturers and Texas Eastern have agreed that Texas Eastern will serve the additional 920

Mcf/d to York requested in Docket No. CP66–77, and Texas Eastern will sell an additional 6,000 Mcf/d to Manufacturers, which will sell 6,000 Mcf/d to UGI, pursuant to the authorization Manufacturers received in Docket No. CP65–149.

These proceedings do not involve the construction of any new facilities. The rates charged by Texas Eastern to Manufacturers and York are Texas Eastern's 60 day Winter Service Rates on file with the Commission. Similarly, the rates charged by Manufacturers to UGI are Manufacturers' 50 day Winter Service on file with the Commission.

Notice of the application in Docket No. CP66–167 was published in the Federal Register on May 21, 1966 (31 F.R. 7417). No notices or petitions to intervene were filed in response thereto.

At a hearing held on May 26, 1966, the Commission on its own motion made a part of the record in these proceedings the record compiled at the prehearing conference of May 3, 1966 in Docket No. CP66–77, which sets forth a description and explanation of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware Corporation, having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as found in Docket No. G–880, 6 FPC 191 (1947).

(2) Texas Eastern's proposed sale of 6,000 Mcf/d to The Manufacturers Light and Heat Company and 920 Mcf/d to York County Gas Co. is subject to the jurisdiction of the Commission.

(3) The proposed sales are required by the public convenience and necessity.

(4) Texas Eastern Transmission Corporation's withdrawal of its application as to UGI in Docket No. CP66–77, and The Manufacturers Light and Heat Company's withdrawal of its opposition in Docket No. CP66–77 are required by the public convenience and necessity.

(5) Texas Eastern Transmission Corporation's amendment of its application in Docket No. CP66–167 is required by the public convenience and necessity, and accordingly should be granted.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Texas Eastern Transmission Corporation's withdrawal of its application in Docket No. CP66–77 is granted insofar as it relates to UGI.

(B) The Manufacturers Light and Heat Company's withdrawal of its opposition in Docket No. CP66–77 is granted.

(C) Texas Eastern Transmission Corporation's amendment to its application in Docket No. CP66–167 is granted.

(D) Certificates of public convenience and necessity are issued to Texas Eastern Transmission Corporation authorizing the sale of 6,000 Mcf/d of Winter Service gas to The Manufacturers Light and Heat Company and 920 Mcf/d of Winter Service gas to York County Gas Company for a period of twenty years commencing December 16, 1965.

(E) The certificates issued by paragraph (D) above and the rights granted thereunder are conditioned upon Texas Eastern Transmission Corporation's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE DAYTON POWER AND LIGHT COMPANY, DOCKET NO. E-7268

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 2, 1966)

The Dayton Power and Light Company (Applicant), filed an application with the Federal Power Commission on February 4, 1966, seeking an order pursuant to Section 203 of the Federal Power Act authorizing the acquisition of the electric facilities of the City of Miamisburg, Ohio.

Applicant is incorporated under the laws of the State of Ohio and is qualified to do business in that State with its principal place of business at Dayton, Ohio, and is engaged primarily in the generation, transmission, distribution and sale of electric energy in 24 counties in southwestern Ohio.

Miamisburg is an incorporated municipality under the laws of the State of Ohio and operates an electric utility system serving the City and some of the nearby farms. During 1964 it served 5,027 retail customers.

According to the application, the electric facilities of Miamisburg were offered for sale through a public bid procedure prescribed by Ohio law set forth in the Revised Code of Ohio. On July 6, 1965, the City Council of Miamisburg passed its Ordinance No. 1380 authorizing the advertisement for sale of the electric facilities of the City for not less than $4,695,350 to the highest bidder. Thereafter, the approval or disapproval of the Ordinance was placed on the ballot by referendum petition. On November 2, 1965, the electors of Miamisburg approved the Ordinance to sell. The Applicant which serves the surrounding areas and also supplies about 40% of Miamisburg's energy requirements submitted the highest and best bid. Under this bid, the Applicant proposes to purchase the facilities for a cash consideration of $5,156,560 plus $20,000 for estimated acquisition expenses. Miamisburg's electric facilities have an estimated original cost of $3,600,000 and an estimated accumulated provision for depreciation of $1,100,000, for an estimated depreciated original cost of $2,500,000. The Applicant's consideration of $5,156,560 plus $20,000 for estimated acquisition expenses is a total acquisition cost of $5,176,560, as of December 15, 1965. Of this total cost, $5,076,560 is considered as applicable to electric plant and $100,000 to supplies and fuel stock. On the basis of these amounts the purchase will create an electric plant acquisition adjustment of $2,576,560. The Applicant proposes to eliminate the entire amount of the acquisition adjustment by a debit to Account 216 Unappropriated Earned Surplus. In addition to the immediate cash payment, Applicant will pay rentals and provide services as follows:

(1) $550 per month rental for five years of the power plant site.

(2) Removal of all equipment from power plant building and vacation of premises at the end of five years.

(3) $100 per month rental for ten years of the substation site adjacent to the power plant.

(4) The City will adopt and Applicant will accept a street lighting ordinance establishing a rate for such service. Applicant will provide free street lighting service for the first three years after settlement date; service at one-fourth the ordinance rate in the fourth year; at one-half such rate in the fifth year; and at three-fourths such rate in the sixth year. The full rate will be charged thereafter.

Applicant represents that the acquisition of Miamisburg's facilities will permit their consolidation into one integrated system with resultant economies and increased reliability and according to the Applicant, Miamisburg will be afforded improved service resulting from Applicant's improvement of the existing facilities. Such improvements will include extension of the existing 12 kv distribution system to supplement the existing 4 kv and 12 kv systems. Applicant will establish a district business office and an electric operation center in Miamisburg and will provide customer service on a 24-hour basis. During 1964, average consumption of Miamisburg's residential consumers was 3,726 kwh while that of residential consumers of the Applicant's system was 4,255 kwh. It appears that Applicant has an opportunity to increase energy sales in the Miamisburg area. After the acquisition Applicant proposes to place in effect in Miamisburg its standard electric rates now in effect in other communities which it serves and the Applicant estimates that nearly all residential, industrial and governmental customers and about 80% of the commercial customers would receive some decrease in rates.

Written notice of the application has been given to the Public Utilities Commission of Ohio and to the Governor of that State. Notice was also published in the Federal Register on February 16, 1966 (31 F.R. 2800), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before March 4, 1966, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426.

By letter to the Commission dated February 24, 1966, Harold L. Korn, Spokesman for the Committee for Keeping the Light Plant, requested that no action be taken until the Commission held a public hearing in Miamisburg. The Committee's complaint was that a former City ordinance required a higher price to be paid for facilities and that the City Council had not acted lawfully in accordance with the City ordinances. Subsequently, Harold L. Korn brought a taxpayer's suit in the Common Pleas Court of Montgomery County, Ohio, against the City of Miamisburg and its officers seeking to enjoin the City from contracting to sell the electric facilities. On March 8, 1966, the Court issued its decision finding that the City had acted lawfully and sustaining a motion of the defendants to dismiss the taxpayer's petition. The question of compliance with state laws and local ordinances is a matter for the State courts to decide and not this Commission. No other protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Federal Power Commission as heretofore described and set forth in the Commission's order issued December 21, 1964, *The Dayton Power and Light Company, Columbus and Southern Ohio Electric Company*, Docket No. E-7189 (32 FPC 1488).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Miamis-

burg, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7281

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued June 2, 1966)

By order issued May 23, 1966, 35 FPC 759, in the above-entitled matter, the Commission authorized Montana-Dakota Utilities Co. (Applicant), to issue and sell at competitive bidding $10,000,000, principal amount of First Mortgage Bonds, due 1986, subject among others, to the provisions set forth in paragraph (C) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on June 2, 1966, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Equitable Securities Corporation, to purchase the proposed issuance of $10,000,000, principal amount of Bonds, for the price of 99.121% of principal amount, with an interest rate of 5⅞%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (C) of the Commission's order issued May 23, 1966, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (B), (D), (E) and (F) of the Commission's order issued May 23, 1966, in the above docket.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL VERMONT PUBLIC SERVICE CORPORATION, PROJECT NO. 2487

ORDER ISSUING LICENSE (MINOR)

(Issued June 3, 1966)

Application was filed on October 29, 1964 by Central Vermont Public Service Corporation (Applicant) of Rutland, Vermont, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2487, known as the Hoosick Falls Project, located on the Hoosick River, a tributary of the Hudson River, in Rensselaer County, New York, in the vicinity of Hoosick Falls. No lands of the United States are affected by the project.

According to the application, the project began operation in 1890. The existing hydraulic turbines and generators were installed in 1925 and 1928. The turbines have a combined capacity of 1,510 horsepower.

Information furnished to the Commission by Applicant shows that the Hoosick Falls project, situated in the State of New York, is connected with Applicant's 46 kv transmission system at the Bennington substation, in southwestern Vermont, and that in 1964, for instance, the entire net generation from the Hoosick Falls project (1,768,503 kwh) was transmitted from New York to Vermont.

The Department of the Interior, in reporting on the application, advised that while special license provisions for public access, parking areas, fish passage facilities, or minimum flows, are not immediately necessary, future population growth and leisure time may make necessary development of the stream's fishery resources to meet the rising need for sport fishing. The Department recommended that any license for the project include the terms and conditions set forth in Form L-9 (32 FPC 577) and a special condition, in the interests of fish, wildlife, and recreation. Since Form L-9 is not applicable for inclusion in licenses for such as the subject project, we are including as a part of the license herein granted the terms and conditions set forth in attached Form L-12 which contains terms and conditions in the interests of the Department similar to those contained in Form L-9, and a special condition designated herein as Article 12.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of Health, Education, and Welfare has reported that the project has no adverse effect on water supply or pollution control, and none is expected.

The license herein granted shall have an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting licensing authority over Taum Sauk Project No. 2277 by virtue of the effect of the hydroelectric project on the interests of interstate commerce by its utilization of non-navigable headwaters of a navigable stream to generate electric energy for an interstate power system (381 U.S. 90), and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.* (33 FPC 275), we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of these sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) The project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of Vermont, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign com-

merce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Central Vermont Public Service Corporation (Licensee) of Rutland, Vermont, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of May 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of Hoosick Falls Project No. 2487, located on the Hoosick River in Rensselaer County, New York, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act, insofar as not expressly waived herein, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Hoosick Falls Project consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States;

(ii) project works as follows: (1) a concrete dam approximately 220 feet long and 30 feet high surmounted by 2-foot flashboards, having a 150-foot spillway section and a concrete structure with sliding head gates; (2) a 16.3-acre reservoir with storage limited to hourly pondage; (3) a canal approximately 900 feet long and 75 feet wide (the north wall of which is an earth dike) having three trash racks at the powerhouse end and a 53-foot concrete spillway equipped with 2-foot flashboards located directly below the dam; (4) a powerhouse containing three vertical generating units with a combined capacity of 1,050 kw driven by three turbines with a combined capacity of 1,510 hp; (5) a 34.5 kv transmission line connecting the plant to the North Bennington substation; and (6) appurtenant electrical and mechanical facilities; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-12 (May 1, 1966) entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (*infra*), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall, for the conservation and development of fish resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such fish facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the New York Conservation Department, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 13. The Licensee shall pay to the United States the following annual charge, effective May 1, 1965:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, $70.00 per annum.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to be waived, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

FORM L-12
(May 1, 1966)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MINOR PROJECT AFFECTING THE INTERESTS OF INTERSTATE OR FOREIGN COMMERCE

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

Article 3. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 4. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain under the license.

Article 5. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road.

Article 6. The operations of the Licensee, so far as they effect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 8. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 9. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 10. The right of the Licensee and of its transferees and successors to use or occupy waters, over which the United States has jurisdiction, under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 11. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly waived in the license.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COMMONWEALTH EDISON COMPANY AND CENTRAL ILLINOIS ELECTRIC AND GAS COMPANY, DOCKET NO. E-7275

ORDER PROVIDING FOR HEARING

(Issued June 3, 1966)

Upon consideration of the joint application submitted on behalf of Commonwealth Edison Company (Commonwealth) and Central Illinois Electric and Gas Company (Central) for authorization to merge their respective facilities and operations submitted March 2, 1966, the Commission deems it in the public interest to afford applicants and all other interested parties opportunity for oral hearings prior to disposition of the application on the merits. Important legal and policy considerations affecting this Commission's administration of its overall regulatory responsibilities under the Federal Power Act are presented by its determination as to whether the proposed merger is consistent with the public interest. These responsibilities embrace accounting, corporate, facility interconnection and coordination, financial and rate making considerations, Sections 202, 205, 206 and 301 of the Federal Power Act. And see also the Public Utility Holding Company Act, 15 U.S.C. 79, *et seq.*

Underlying our consideration in setting this matter for hearing is the Commission's view that the public interest and the requirements of the Federal Power Act will generally be best served by setting for hearing all applications requesting approval of the merger and consolidation of two or more Class A electric utilities[1]. In the near future a formal statement of this Commission's policy will be included as a part of the Commission's Rules of Practice and Procedure, Part II General Policy and Interpretations (18 CFR).[2]

As filed the joint application of Commonwealth and Central includes substantial supporting factual information. To date, the Commission has received comments unfavorable to the proposed merger transaction submitted upon behalf of the Utility Users League and named individuals[8]. Presumably, factual data included in the joint application will be submitted in support of the applicants' positions during the hearing provided herein. Additionally, the applicants and all interested parties should address themselves to the general considerations raised by the proposed merger and the overall requirements of the Federal Power Act: relating to the advantages and disadvantages of corporate integration to the respective customers of the facilities and operations of Commonwealth and Central balanced against the advantages and disadvantages arising from their present non-affiliated status or those which might result from increased coordination and operation of the properties of the two companies without corporate integration.

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[1] Electric utilities having annual electric operating revenues of $2,500,000 or more.

[2] We note that the Illinois Commerce Commission similarly provides for hearings on mergers of this type.

To afford all parties and any prospective interveners opportunity to prepare for presentations at the oral hearing in this matter without unduly delaying our ultimate disposition of the joint application filed by Commonwealth and Central, we deem it necessary to prescribe certain procedural rulings governing the hearing as hereinafter provided. The Petition For Leave To Intervene submitted upon behalf of the Utility Users League and named individuals and the Answer thereto submitted upon behalf of Commonwealth and Central on April 14, 1966, will be considered subsequently together with any other petitions to intervene.

The Commission orders:

(A) A public hearing shall commence in a hearing room of the Federal Power Commission on July 11, 1966 at 10:00 a.m. (EDST), 441 G Street, Washington, D.C., to consider the issues raised by the joint application of Commonwealth and Central submitted in the above-entitled matter on March 2, 1966 and the issues set forth in the recital above. Any interested person, State or local public authorities desiring to participate in the hearing as provided herein shall submit petitions for leave to intervene or notices of intervention, as appropriate, on or before June 20, 1966, in accordance with Sections 1.8 and 1.37 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

(B) The Presiding Examiner shall convene a prehearing conference at the commencement of the hearing for purposes of receiving any factual stipulations, statements of position; and shall dispose of all prehearing procedural questions including the time for presentation of evidence and cross-examination thereof.

Commissioner Bagge *dissenting.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER GRANTING CONTINUANCE AND DENYING MOTION FOR ADDITIONAL PREHEARING CONFERENCE AND STAY OF PROCEEDING

(Issued June 3, 1966)

In *Scenic Hudson Preservation Conference* v. *F.P.C.*, 354 F. 2d 608 (CA2), cert. denied, May 16, 1966, the Court set aside three orders of the Commission including the order of March 9, 1965 (Opinion No. 452, 33 FPC 428), granting a license to Consolidated Edison Company of New York, Inc. (Consolidated Edison, or Applicant) for the construction and operation of the Cornwall Pumped Storage Project, Project No. 2338. In accordance with the direction of the Court, the Commission, by its order of January 25, 1966, 35 FPC 151, fixed a hearing on remand, and it ordered a prehearing conference which was held in New York City on March 22 and 23, 1966.

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[8] Petition For Leave To Intervene upon behalf of petitioners Utility Users League, Nickolas J. Barnes, Sidney J. Rosenberg and Harry R. Booth, received April 7, 1966.

Consolidated Edison applied for a license on January 29, 1963. The application, as amended on September 13, 1963, sought authorization to construct and operate certain project works, including a powerhouse, of the modified outdoor type, mostly underground, to be recessed into the base of the north face of Storm King Mountain on the Hudson River near Newburgh, New York. On May 31, 1966, the Applicant filed an amended application providing, among other things, for placing all powerhouse structures and facilities and the step up substation underground in the Village and Town of Cornwall, New York, near the previous powerhouse site.

At the prehearing conference in March, 1966, the Presiding Examiner prescribed a schedule for the filing of prepared direct testimony prior to the hearing and ruled that the hearing should commence in New York City on October 17, 1966. On April 15, 1966, the Scenic Hudson Preservation Conference, the Town of Putnam Valley, and the Sierra Club and the Atlantic Chapter of the Sierra Club, filed a motion, supported by other interveners,[1] that the dates designated by the Presiding Examiner for submission of prepared testimony and commencement of the hearing be vacated, that another prehearing conference be held, and that a stay be granted for all purposes.

At the prehearing conference the Applicant indicated its intention to study the feasibility of an underground powerhouse and stated it proposed to file any amended license application providing therefor by April 29, 1966. The Presiding Examiner fixed dates, including those for the filing of direct testimony, on the assumption that the amended application would be filed on April 29, 1966. However, as the Applicant did not file the amended application until May 31, 1966, it is appropriate that the interveners opposing the project be given a month's extension of time in which to file their direct case.[2]

The requests for a stay and for another prehearing conference were based on the fact that at the time the motion was filed a petition for certiorari had been filed by the Applicant and was then pending. On May 16, 1966 certiorari was denied by the Supreme Court. No substantial reason has been advanced for another prehearing conference or for a stay of the proceeding. If for other reasons, based on the amended application, the moving parties feel that another prehearing conference should be held, they are, of course, free to make application to the Presiding Examiner. At the prehearing conference the Presiding Examiner prescribed a procedure substantially as hereinafter provided. For the convenience of the participants this procedure is outlined below with the dates adjusted in accordance with this order, including the date for the commencement of the hearing.

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[1] The Secretary of the Interior and the following other interveners supported the motion: Town of Philipstown; Philipstown Citizens Association; the Cortlandt Conservation Association, Inc., and the Hudson River Fishermen's Association.

[2] The Presiding Examiner ruled that prior to the hearing interveners in opposition to the project shall serve testimony on (1) gas turbines as an alternative to the project; (2) air pollution; (3) the impact of project facilities (including overhead transmission lines) on scenic beauty, community planning and recreational resources; (4) possible seepage from the project reservoir; (5) the general safety of dike structures.

It was also ruled at the prehearing conference that Scenic Hudson and other interveners in opposition to the project might defer their testimony on the following subjects (until after that of the Applicant, the Secretary of the Interior, and the staff had been received): (1) alternative power sources (other than gas turbines but including interconnections); (2) underground transmission cost; (3) fish protection; (4) Hudson River development, including alternative hydroelectric power sites.

The Commission finds:

(1) The dates set forth in the procedural schedule prescribed by the Presiding Examiner should be adjusted to permit interveners in opposition to the project an additional month to prepare their direct testimony.

(2) The motion of the Scenic Hudson Preservation Conference, the Town of Putnam Valley, and the Sierra Club and the Atlantic Chapter of the Sierra Club for another prehearing conference and for a stay of this proceeding should be denied.

The Commission orders:

(A) The motion of the above-named interveners for another prehearing conference and for a stay of this proceeding, is hereby denied.

(B) The filing schedule in this proceeding, and the date of commencement of the hearing are as follows:

1. The Applicant and interveners supporting the application shall file by September 7, 1966, with the Secretary of the Commission an original and ten copies of all testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.
2. The Secretary of the Interior and interveners opposing the project shall file with the Secretary, by October 13, 1966, an original and ten copies of all direct testimony and exhibits including qualifications of witnesses.
3. The direct case of the staff of the Commission shall be filed by October 27, 1966.
4. All motions to strike shall be filed with the Presiding Examiner by November 3, 1966, with replies to such motions to be filed by November 10, 1966.
5. Copies of all filings specified herein shall be served on all other parties.
6. On November 14, 1966 the hearing in this proceeding shall commence in New York City.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE NORTHERN ELECTRIC COOPERATIVE, DOCKET NO. E-6670

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued June 3, 1966)

The Northern Electric Cooperative (Northern), a corporation organized and existing under the laws of the State of Montana, with its principal place of business at Opheim, Montana, filed an application on January 21, 1966 for a supplemental order, pursuant to Section 202(e) of the Federal Power Act, authorizing an increase in the amounts of electric energy which Northern is presently authorized to transmit from the United States to Canada.

By Commission order issued August 10, 1965 in the above docket, (34 FPC 481), Northern was authorized to transmit electric energy from the United

States to Canada at three points on the international border between the United States and Canada as follows:

Line No. 1: 24,000 kilowatt-hours per year at a rate of transmission not to exceed 24 kilowatts;

Line No. 2: 18,000 kilowatt-hours per year at a rate of transmission not to exceed 20 kilowatts; and

Line No. 3: 36,000 kilowatt-hours per year at a rate of transmission not to exceed 35 kilowatts.

Northern now seeks authorization to transmit electric energy from the United States to Canada in the following amounts and at the following rates of transmission:

Line No. 1: 30,000 kilowatt-hours per year at a rate not to exceed 24 kilowatts;

Line No. 2: 25,000 kilowatt-hours per year at a rate not to exceed 20 kilowatts; and

Line No. 3: 42,000 kilowatt-hours per year at a rate not to exceed 35 kilowatts.

The amounts of electric energy which Northern proposes to export like those amounts presently exported pursuant to the aforementioned authorization are to be transmitted to the Province of Saskatchewan, Canada, from points within the State of Montana over Northern's three 7.2 kv single phase lines which, as indicated above, are designated as Line No. 1, Line No. 2, and Line No. 3, respectively. These lines are covered by a Permit signed by the Chairman of the Federal Power Commission on December 12, 1956, as modified by Commission order issued April 17, 1963 (29 FPC 768), all in the above docket.

According to the application, the increased amounts of electric energy will be used by Northern to meet the expanding electric requirements of its retail customers in Canada.

The Fort Peck Project of the United States Government will continue to be the source of the electric energy which is exported by Northern.

Inasmuch as the electric energy exported by Northern at each of the three points on the United States-Canadian border is supplied from the same source, we are hereinafter authorizing the total amount of energy which Northern may export over its three lines without specifying the maximum amount of energy which may be exported over each line. In granting this authorization we have considered the anticipated growth in the electric requirements of Northern's Canadian customers as well as the pending request of Northern.

Written notice of the application has been given to the Board of Railroad Commissioners of the State of Montana and to the Governor of that State. Notice of filing of the application has also been given by publication in the Federal Register on April 20, 1966 (31 F.R. 6077), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before April 26, 1966, file with the Federal Power Commission, Washington, D.C. 20426, a petition or protest. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The transmission of electric energy from the United States to Canada, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Northern is hereby authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Northern is hereby authorized to transmit from the United States to Canada over Line Nos. 1, 2, and 3 shall not exceed, in total amount, 150,000 kilowatt-hours per year, at a transmission rate not to exceed 100 kilowatts. The transmission rate shall be the maximum monthly rate of transmission as determined from the sum of the non-coincidental peak deliveries over Line Nos. 1, 2, and 3. The energy which Northern is hereby authorized to export shall be transmitted over the facilities specified in the Permit signed by the Chairman of the Federal Power Commission on December 12, 1956, as modified by Commission order issued April 17, 1963, as referred to above.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit signed by the Chairman of the Federal Power Commission, referred to in Paragraph (B) above.

(D) Northern shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(E) Northern shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada over each of the afore-described three lines pursuant to the authority herein granted; shall make, keep, and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate to the Commission, with respect to such transmission of energy, reports annually on or before February 15 showing (with respect to each of the afore-described three-lines) the total kilowatt-hours delivered, the maximum kilowatts of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Northern.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by Commission order issued August 10, 1965, referred to above.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-298

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 6, 1966)

On March 21, 1966, Central Illinois Public Service Company (Applicant) filed in Docket No. CP66-298 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 401 Mcf of natural gas per day for resale and distribution in the Village of Nebo, Pike County, Illinois, and environs, as more fully set forth in the application.

Applicant will construct and operate a 2-inch lateral pipeline extending approximately 4.1 miles south from a metering and regulating station to be constructed by Respondent to the Village of Nebo, Illinois. Applicant will also construct a town border station at or near the corporate limits of Nebo and a natural gas distribution system to serve Nebo and its environs.

The total estimated volumes of natural gas required to meet Applicant's annual and peak day requirements during the initial three years of proposed operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	28,110	30,385	41,900
Peak day (Mcf)	268	376	401

Applicant states that the service requested will not increase its present contract demand of 110,000 Mcf per day of gas supply from Respondent.

The total estimated cost of the facilities to be constructed by Applicant is $90,160, which will be financed from internally generated funds.

Applicant has accepted a gas distribution franchise granted to it by the Village of Nebo and a certificate of public convenience and necessity issued by the Illinois Commerce Commission authorizing the construction, operation and maintenance of the facilities.

Respondent was notified of the filing of the application by letter dated March 23, 1966. No answer has been received from Respondent.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on April 5, 1966 (31 F.R. 5388). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued September 23, 1942, in Docket Nos. G-200 and G-207 (3 FPC 273).

(2) Applicant is a public utility company in the State of Illinois and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 401 Mcf per day of its present contract demand obligation to Applicant for resale and distribution in the Village of Nebo, Illinois, and environs, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 401 Mcf per day of its present contract demand obligation to Applicant for resale and distribution in the Village of Nebo, Illinois, and environs, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 30 days thereof.

(D) Respondent shall execute and file with the Commission an amended service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL VERMONT PUBLIC SERVICE CORPORATION, PROJECT NO. 2488

ORDER ISSUING LICENSE (MINOR)

(Issued June 6, 1966)

Application was filed on October 29, 1964 by Central Vermont Public Service Corporation (Applicant) of Rutland, Vermont, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed project No. 2488, known as the Bradford Hydroelectric Project, located on the Waits River, a tributary of the Connecticut River, in the Village of Bradford, Orange County, Vermont. No lands of the United States are affected by the project.

According to the application, the project began operation in 1908, and the existing hydraulic turbine of 600 horsepower and two generators with a capacity of 180 kilowatts each were installed in 1922.

Information furnished the Commission by Applicant shows that the Bradford Project and Applicant's Taftsville Project No. 2490, both of which are situated in eastern Vermont, connect to Applicant's 46 kv interconnected system which extends from Applicant's unlicensed Carvers Fall hydroelectric project in New York, across Vermont, and into New Hampshire at Cornish and Claremont, and includes an interconnection with New England Power Company at Charlestown, New Hampshire. In 1964 for instance, power was transmitted both ways on Applicant's 46 kv system between Ascutney, Vermont, and Claremont, New Hampshire.

The Department of the Interior, in reporting on the application, advised that while special license provisions for public access, parking areas, fish passage facilities, or minimum flows, are not immediately necessary, future population growth and leisure time may make necessary development of the stream's fishery resources to meet the rising need for sport fishing. The Department recommended that any license for the project include the terms and conditions set forth in Form L-9 (32 FPC 577) and a special condition, in the interests of fish, wildlife, and recreation. Since Form L-9 is not applicable for inclusion in licenses for such as the subject project, we are including as a part of the license herein granted the terms and conditions set forth in attached Form L-12 which contains terms and conditions in the interests of the Department similar to those contained in Form L-9, and a special condition designated herein as Article 12.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of Health, Education, and Welfare has reported that there is insufficient information available for judging the effect of the project on water quality, and recommended that any license for the project should provide for future modification of the license in the interest of improving water quality, as provided in Article 13.

We are pleased that the applicant has seen fit to file applications for minor licenses to cover projects such as these. We note that the instant project, similar to many other projects in this category, is a small one constructed many years ago. It may be that the operation of projects of this nature may well become uneconomic before the license expires as its operating costs increase and alternative sources of power become less expensive. However, we are confident that the licensee will file an application to surrender the license for the project at such time as this situation occurs, thereby permitting its removal or converting its use to other purposes, such as recreation, stream flow regulation, or water supply purposes.

The license herein granted shall have an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting license authority over Taum Sauk Project No. 2277 by virtue of the effect of the hydroelectric project on the interests of interstate commerce by its utilization of non-navigable headwaters of a navigable stream to generate electric energy for an interstate power system (381 U.S. 90), and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.* (33 FPC 275), we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of these sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) The project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of

Vermont, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 480 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Central Vermont Public Service Corporation (Licensee) of Rutland, Vermont, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of May 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of Bradford Hydroelectric Project No. 2488, located on the Waits River in Orange County, Vermont, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act insofar as not expressly waived herein, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Bradford Hydroelectric Project consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States;

(ii) project works as follows: (1) a dam constructed of large cut stones capped with concrete, approximately 200 feet long, with a maximum height of 70 feet, having a 116-foot spillway section, five stanchion sections adjacent to the north abutment, and a concrete structure housing a set of trash racks and head gates; (2) a 6.3-acre reservoir; (3) a steel penstock five feet six inches in diameter extending 128 feet to a six-foot diameter surge tank and 80 feet of five-foot diameter penstock between the surge tank and the powerhouse; (4) a powerhouse equiped with one 600 hp horizontal turbine with two wheels and two draft tubes which drives two generators having a capacity of 180 kw each; and (5) appurtenant facilities; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-12 (May 1, 1966) entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (*supra*, p. 875), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall, for the conservation and development of fish resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such fish facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Vermont Fish and Game Board, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 13. The Commission reserves the right to determine at a later date, after notice and opportunity for hearing, what actions shall be taken by Licensee, to improve water quality at the project.

Article 14. The Licensee shall pay to the United States the following annual charge, effective May 1, 1965:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, $24.00 per annum.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL VERMONT PUBLIC SERVICE CORPORATION, PROJECT NO. 2490

ORDER ISSUING LICENSE (MINOR)

(Issued June 6, 1966)

Application was filed on October 29, 1964 by Central Vermont Public Service Corporation (Applicant) of Rutland, Vermont, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No.

2490, known as the Taftsville Project, located on the Ottauquechee River, a tributary of the Connecticut River, in Windsor County, Vermont, in the vicinity of Taftsville. No lands of the United States are affected by the project.

According to the application, the project began operation in 1910. The existing hydraulic turbine with a capacity of 675 horsepower and the generator with a capacity of 500 kilowatts were installed in 1943.

Information furnished the Commission by Applicant shows that the Taftsville Project and Applicant's Bradford Project No. 2488, both of which are situated in eastern Vermont, connect to Applicant's 46 kv interconnected system which extends from Applicant's unlicensed Carvers Fall hydroelectric project in New York, across Vermont, and into New Hampshire at Cornish and Claremont, and includes an interconnection with New England Power Company at Charlestown, New Hampshire. In 1964, for instance, power was transmitted both ways on Applicant's 46 kv system between Ascutney, Vermont, and Claremont, New Hampshire.

The Department of the Interior, in reporting on the application, advised that while special license provisions for public access, parking areas, fish passage facilities, or minimum flows, are not immediately necessary, future population growth and leisure time may make necessary development of the stream's fishery resources to meet the rising need for sport fishing. The Department recommended that any license for the project include the terms and conditions set forth in Form L-9 (32 FPC 577) and a special condition, in the interests of fish, wildlife, and recreation. Since Form L-9 is not applicable for inclusion in licenses for such as the subject project, we are including as a part of the license herein granted the terms and conditions set forth in attached Form L-12 which contains terms and conditions in the interests of the Department similar to those contained in Form L-9, and a special condition designated herein as Article 13.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of Health, Education, and Welfare has reported that there is insufficient information available for judging the effect of the project on water quality, and recommended that any license for the project provide for future modification of the license in the interest of improving water quality, as provided in Article 14.

The Vermont Department of Water Resources has expressed its opinion that the project may have some effect on water quality.

The license herein granted shall have an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting licensing authority over Taum Sauk Project No. 2277 by virtue of the effect of the hydroelectric project on the interests of interstate commerce by its utilization of non-navigable headwaters of a navigable stream to generate electric energy for an interstate power system (381 U.S. 90), and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, (33 FPC 275) we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of these sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) The project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of Vermont, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 670 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act:

Sections 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14; except insofar as the power of condemnation is reserved; 15, 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Central Vermont Public Service Corporation (Licensee) of Rutland, Vermont, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of May 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of the Taftsville Project No. 2490, located on the Ottauquechee River in Windsor County, Vermont, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act, insofar as not expressly waived herein, which Act is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Taftsville Project No. 2490 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined;

(ii) (1) a concrete dam approximately 220 feet long and 16 feet high containing a spillway section and on the west end a concrete structure housing head gates and trash racks; (2) a spillway about 194 feet long topped by 18-inch wood flashboards; (3) a reservoir about 16.6 acres in size with about 30 acre-feet useful storage; (4) a rectangular concrete penstock 11 feet high, six feet eight inches wide, and approximately 36 feet long; (5) a powerhouse containing one vertical turbine with a capacity of 675 hp connected to a generator having a capacity of 500 kw; (6) appurtenant facilities; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–12 (May 1, 1966) entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (*supra*, p. 875), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge, effective May 1, 1965:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $33.50 per annum.

Article 13. The Licensee shall, for the conservation and development of fish resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such fish facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Vermont Fish and Game Board, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 14. The Commission reserves the right to determine at a later date, after notice and opportunity for hearing, what action shall be taken by Licensee, to improve water quality.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G-8932

ORDER AMENDING ORDER AUTHORIZING IMPORTATION OF NATURAL GAS

(Issued June 6, 1966)

On April 5, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. G-8932 a petition pursuant to Section 3 of the Natural Gas Act to amend the order accompanying Opinion No. 289 (14 FPC 157) by authorizing the importation of additional quantities of natural gas for a limited period of time, all as more fully set forth in the petition.

In a separate proceeding, Petitioner has applied to amend the order in Docket No. G-8932, and has filed an application in Docket No. CP66-315 seeking authorization to construct and operate facilities to transport an additional 200,000 Mcf/d (at 14.9 psia), in two increments of 100,000 Mcf/d each, of natural gas purchased from Westcoast Transmission Company (Westcoast).

In the instant proceeding, Petitioner seeks authorization to import at its existing Sumas, Washington, import point on the international boundary between the United States and Canada up to 50,000 Mcf/d (at 14.9 psia) of natural gas in addition to the presently authorized quantity of 300,000 Mcf/d. The additional quantity will be purchased from Westcoast and transported at the international boundary and in the United States through existing facilities. The additional quantity will be purchased on an interruptible basis through December 31, 1966, or until Westcoast is prepared to deliver 400,000 Mcf/d (at 14.9 psia) to Petitioner at the Sumas import point, whichever occurs first.

By amending order issued December 10, 1965, 34 FPC 1443, Petitioner was authorized to import up to 50,000 Mcf/d on an interruptible basis in addition to the presently authorized quantity of 300,000 Mcf/d. Said authorization expired on April 30, 1966. By the authorization requested herein, the authorization would be extended until December 31, 1966, or until an additional firm quantity may be authorized as otherwise proposed.

It appears to be consistent with the public interest to permit the importation of the additional quantity of gas as requested. However, since the additional gas is for interruptible service, a situation could arise in which higher costs would be assigned to firm service due to the effect of the purchase of the additional quantity on purchased gas costs and peak day deliveries; and, therefore, the authorization hereinafter granted will be appropriately conditioned to require the adjustment of costs and sales used by Petitioner in any future rate proceeding.

After due notice no petition to intervene or protest to the granting of the petition has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and consistent with the public interest to authorize Petitioner to import an additional quantity of natural gas on a limited basis.

The Commission orders:

(A) The order accompanying Opinion No. 289 is amended by authorizing Petitioner to import an additional quantity of natural gas on a limited basis as hereinbefore described and as more fully described in the petition herein, and in all other respects said order shall remain in full force and effect.

(B) In any future rate proceeding Petitioner shall adjust the costs and sales offered in evidence in said proceeding by eliminating therefrom the purchased gas costs it may incur due to the additional purchases authorized herein and by eliminating therefrom the additional peak day and annual sales it may make as a result of the additional service it can render with the additional quantity of natural gas authorized to be imported.

(C) The authorization issued herein is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, ET AL., DOCKET NO. CP64-211, ET AL.

ORDER EXTENDING TIME FOR CONSIDERATION OF QUALITY STATEMENTS

(Issued June 6, 1966)

The Commission in Opinion No. 484 issued January 6, 1966, 35 FPC 40, required each producer applicant, other than Socony Mobil Oil Company, Inc., to file a quality statement for each contract involved therein. The opinion also provided that where the quality statement reflected full agreement between the seller and El Paso Natural Gas Company, the purchaser under these contracts, it was to be deemed accepted unless the Commission within 60 days after such filing ordered otherwise. By order issued April 11, 1966, 35 FPC 486, herein the time for consideration by the Commission of these quality statements was extended to June 6, 1966.

Further time is needed for the consideration of the quality statements thus far submitted. We shall therefore extend the time for consideration to June 30, 1966.

The Commission orders:

The time for consideration by the Commission of the quality statements heretofore filed by the producer applicants in these proceedings is extended to June 30, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66-130

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 6, 1966)

On October 26, 1965, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP66-130 an application, as supplemented on December 20, 1965, January 18, 1966, and April 13, 1966, pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition from Storage Corporation and operation of certain natural gas facilities and the development, testing and operation of an underground natural gas storage field, all as more fully set forth in the application.

Storage Corporation is a wholly-owned subsidiary company of Applicant. Storage Corporation's activities have been limited to testing to determine the suitability of the St. Jacob Field area of Madison and St. Clair Counties, Illinois, for storage and to the development of the storage facilities, including the injection of cushion gas. Applicant will assume direct control of and further develop the field by means of the following specific program.

Applicant will acquire the assets of Storage Corporation, consisting almost entirely of its interests in or related to the St. Jacob Field, through liquidation of Storage Corporation. In exchange for the assets of Storage Corporation, Applicant proposes to cancel the indebtedness of Storage Corporation to Applicant and to completely cancel all of its stock.

Applicant will acquire through this proposed liquidation approximately 290 leases from landowners in the St. Jacob Field area covering approximately 12,000 surface acres (together with all gas in storage) and 15 gas injection, withdrawal and observation wells together with the equipment and facilities installed therein.

The storage field is described as being separated into the north and south enclosures. Recent developments in the north area produced evidence that the St. Peter formation is capable of storing gas and for the two years ended September 30, 1965, approximately 2,500,000 Mcf have been injected. Initial developments in the south area were not favorable because injected gas migrated into other formations.

The total recorded amount of the fixed assets of Storage Corporation as of June 30, 1965, was $2,938,179.

Applicant also seeks authority to drill or complete the drilling of six additional gas input and withdrawal and observation wells, to construct 26,800 feet of additional field lines, to install 1,100 horsepower additional compressor facilities, a liquid separator, dehydration facilities, regulators, meters and other miscellaneous and appurtenant facilities, and otherwise to develop and operate the field as a natural gas storage facility, as more fully set forth in the application. The cost of these facilities and development work is estimated by Applicant to be $2,500,800, which is to be financed from available funds.

A temporary certificate was issued to Applicant on December 17, 1965, authorizing the construction and operation of certain of the proposed field lines and the installation of 550 compressor horsepower of the 1,100 horsepower requested, along with certain appurtenances and regulators. Storage Corporation was also authorized to sell natural gas to Applicant for a one-year period.

Due notice of the filing of the application in this proceeding was published in the Federal Register on November 17, 1965 (30 F.R. 14392), and notice of the filing of December 20, 1965, was published on January 8, 1966 (31 F.R. 278). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 2, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation with its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition, construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition, construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Mississippi River Transmission Corporation authorizing the acquisition, construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be acquired and constructed shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) The certificate issued by paragraph (A) above is further conditioned upon Applicant's receiving all necessary state approvals of the proposed merger.

(E) The certificate issued by paragraph (A) above is further limited and conditioned, as follows:

1. *North Area*

a. Applicant is authorized to drill an additional 6 wells in the north area, bringing the total number of wells to 14.

b. The maximum inventory of natural gas to be stored in the St. Peter sandstone in the north area of the field shall not exceed 4,800,000 Mcf at 14.73 psia.

c. Applicant is authorized to inject and withdraw natural gas from the north area as proposed.

2. *South Area*

a. Applicant is authorized to rework the existing wells in the south area of the field and to carry out additional testing of the St. Peter sandstone in order to determine the cause of previous gas leakage.

b. Applicant is authorized to utilize the S-1 well in conjunction with testing and developing the Mt. Simon sandstone for gas storage purposes.

c. Not more than $330,400 shall be expended for cushion gas to be injected into the St. Peter and Mt. Simon sandstones.

(F) Applicant shall submit to the Commission semiannual reports (to coincide with the end of each injection and withdrawal season) containing the following information:

1. *North Area*

a. The daily volumes of gas injected into and withdrawn from the St. Peter formation during the period and the volumes of gas in the aquifer at the end of each month.

b. A tabulation of wells drilled, cleaned or recompleted, with subsea elevations of formations and casing settings.

c. Any pressure surveys conducted during the period of gas wells and water levels in observation wells (by individual wells).

d. A map of the storage project showing the location of the wells, the latest revised structure contours, and the location and extent of the gas bubble.

e. Reports shall continue until the storage inventory volumes have reached the maximum permitted in this order or until otherwise ordered by the Commission, whichever first occurs.

2. *South Area*

a. Data required under paragraphs (F) 1 a, b, c and d, above, for the north area whenever applicable to the St. Peter and Mt. Simon reservoirs in the south area.

b. Results of any tracer program by which leakage of any gas may be determined. If leakage of gas exists, the report should show the estimated total volume of gas leakage, the monthly volume of any recycled gas and the estimated remaining inventory of gas in the original formation at the end of the period.

c. Reports shall continue to be filed through a three-year period and thereafter until the St. Peter or Mt. Simon reservoirs in the south dome, or both, are either certificated for regular service or abandoned, unless otherwise ordered by the Commission.

(G) The accounting treatment of the investment of Applicant in the St. Jacob Storage Field prior to July 1, 1965, shall be as follows:

1. The $84,267 gas cost applicable to gas losses in the South Area shall be charged to Account 216, Unappropriated Earned Surplus.

2. The $15,217 applicable to return paid to Applicant which is included in the gas costs related to the North Area shall be charged to Account 216, Unappropriated Earned Surplus.

3. The balance of the cost of the St. Jacob Storage Field, $2,838,695, shall be retained in Account 186, Miscellaneous Deferred Debits, pending final accounting determination to be made after the success or failure of the storage project is determined.

(H) No part of the acquisition cost of the St. Jacob Storage Field is to be included in any future rate base calculation until a final determination is made regarding the success or failure of the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66–244

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 6, 1966)

On February 1, 1966, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP66–244 an application and supplementary data on April 14, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application as supplemented.

Applicant seeks authorization to increase its peak day capacity by approximately 150,000 Mcf to a total of 2,284,000 Mcf daily through the installation of the following facilities:

(a) approximately 145.7 miles of 30-inch and 36-inch main pipeline loop, representing a continuation of Applicant's fourth main pipeline, in the states of Kansas, Missouri, Illinois and Indiana,

(b) 20,050 compressor horsepower to be installed in seven existing main line compressor stations on Applicant's system,

(c) approximately 61.7 miles of 12-inch, 16-inch and 22-inch service lateral loops to be installed at various points on Applicant's present system,

(d) measuring station revisions and other appurtenances in conjunction with this proposed system expansion.

The increased pipeline capacity will be utilized in the sale of 127,000 Mcf daily to 33 of its present customers and three new customers, Hamilton Natural Gas Company, City of Herman and Western Indiana Public Service Company, Inc. Deliveries to the City of Herman and Western Indiana Public Service were ordered in Docket Nos. CP66–24 and CP65–380, respectively. Also included are volumes for which Section 7(a) applications have been filed by Hamilton Natural Gas Company (1,331 Mcf daily) in Docket No. CP66–87, and by Missouri Utilities Company (4,897 Mcf daily) in Docket No. CP66–230. The remaining 23,000 Mcf per day of unallocated capacity will be reserved for future Section 7(a) service and increasing demands of existing customers.

After due notice of the application published in the Federal Register on February 16, 1966 (31 F.R. 2801) petitions for leave to intervene were filed jointly on February 25, 1966, by Fuels Research Council, Inc., National Coal Association and United Mine Workers in opposition to the application, and by The Ohio Fuel Gas Company and Michigan Gas Utilities Company on February 28, 1966, Central Illinois Electric and Gas Co., on March 2, 1966, and Central Illinois Public Service Company on March 13, 1966, not in opposition to the application. The City of Fulton, Missouri filed on March 4, 1966, a motion to consolidate the proceeding with Docket No. CP66–50, or in the alternative to grant it leave to intervene in Docket No. CP66–244. Notices of withdrawal of petitions to intervene were filed by the City of Fulton on March 16, 1966 and by Fuels Research Council, Inc., *et al.*, on May 23, 1966. No other petitions to intervene, or notice of intervention or protest to the granting of the application have been filed.

At a hearing held on June 2, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The proposed construction and operation of facilities and the transportation and sale of natural gas by Applicant as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and the transportation and sale of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(2), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities and the transportation and sale of natural gas, as hereinbefore described and as more fully described in the application, as supplemented, and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(2), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-323

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 6, 1966)

On April 8, 1966, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP66-323 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon by sale certain facilities, and for a certificate of public convenience and necessity authorizing the construction and operation of measuring and regulating facilities on its Danville, Illinois lateral, all as more fully described in the application.

Applicant proposes to abandon by sale and transfer as per letter agreements of December 13, 1965:

(1) Approximately 10,524′ of its 12″ Danville lateral (F5–296) together with the various related appurtenances, 9-farm taps (presently served by the Town Gas Company) and measuring and regulating station, all located in Vermilion County, Illinois, to Illinois Power Company.

(2) Approximately 54,385′ of its 4″ Lincoln lateral located in Logan County, Illinois, together with the various related appurtenances and 8-farm taps (presently being served by Town Gas Company) to Central Illinois Electric and Gas Company.

(3) Approximately 9,915′ of its 4″ Greenfield lateral located in Hancock County, Indiana, which lies downstream of Applicant's existing measuring and regulating station together with the various related appurtenances, to Greenfield Gas Company.

and to construct and operate:

A measuring and regulating station on the northern end of its remaining portion of the 12-inch Danville lateral (F5–296) in order to continue service to Illinois Power.

The proposals of Applicant will provide each distribution company with a portion of Applicant's lateral facilities, and alter the points of delivery from Applicant to Illinois Power, Central Illinois and Greenfield Gas. Applicant states the proposals will simplify its operations and will provide each of the companies with an opportunity to service urban areas from the portions of the lines to be sold, without having to construct new mains. Nine farm tap customers which are now being served by Town Gas Company from the portion of the 12-inch Danville lateral which is to be acquired by Illinois Power and the eight farm tap customers which are now being served also by Town Gas Company from that portion of the 4-inch Lincoln lateral which is to be acquired by Central Illinois will continue to receive their respective service from Illinois Power and from Central Illinois according to the December 13, 1965, and January 3, 1966, agreements of Illinois Power with Panhandle and with Town Gas Company, respectively, and according to the December 13, 1965, and January 20, 1966, agreements of Central Illinois with Panhandle and with Town Gas Company, respectively.

The cost to Applicant of the new measuring and regulating stations is estimated at $70,000, which Applicant proposes to finance from treasury cash.

Illinois Power and Central Illinois have applied to the Illinois Commerce Commission for authority to purchase and operate the facilities they intend to acquire from Applicant and to continue service to the farm tap customers.

Greenfield Gas and Panhandle have jointly applied to the Public Service Commission of Indiana for authority, respectively, to purchase and to sell the proposed portion of the Greenfield 4-inch lateral.

No service will be abandoned. No existing customer of Panhandle will be adversely affected.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on June 2, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment by sale of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities as hereinbefore described and as more fully described in the application filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities by sale as hereinbefore described, and as more fully described in the application and exhibits filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing the construction and operation of facilities, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The transfer of ownership, and construction of the metering facilities shall be completed and placed in actual operation six months from the date of Commission's order (Section 157.20(b)).

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SOHIO PETROLEUM COMPANY, DOCKET NO. G–17012

ORDER DENYING APPLICATION FOR REHEARING OR RECONSIDERATION

(Issued June 6, 1966)

On May 5, 1966, Sohio Petroleum Company (Sohio) filed an application for rehearing and alternatively a motion for reconsideration of certain of the conditions attached to the temporary certificate issued to Sohio in the above-captioned proceeding by the Commission's letter–order issued April 8, 1966. That order permitted Sohio to sell residue gas (from casinghead gas) to El Paso Natural Gas Company from the Spraberry area, Reagan County, Texas, under its FPC Gas Rate Schedule No. 45 as proposed in the application for certificate.[1]

The conditions to which Sohio has referred are as follows:

(1) The initial rate shall be that provided in the rate schedule accompanying the certificate application or the applicable base area rate (14.5¢ per Mcf at 14.65 psia) as adjusted for quality, measured at the plant tailgate, pursuant to ordering paragraph (B) of the Commission's Opinion No. 468, 34 FPC 159, as modified, whichever is lower.

(2) No increase in rate may be filed prior to January 1, 1968, except in compliance with a specific order of the Commission, for a rate in excess of the applicable area rate as determined pursuant to the Commission's Opinion No. 468, as modified, or pursuant to later order of the Commission.

(3) The filing, within 90 days from the date of initial delivery, of a Rate Schedule-Quality Statement as specified by ordering paragraph (F) of the Commission's Opinion No. 468, as modified, as a supplement to the rate schedule reflecting the rate determined in (1) above.

(4) If the quality of the gas, as measured at the plant tailgate, delivered hereunder at any time deviates from the quality standards set forth in ordering paragraph (B) of Opinion No. 468–A, 34 FPC 1068, so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act; *provided, however*, that adjustments reflecting changes in Btu content shall be computed by the applicable formula and charged without the filing of a notice of change in rate.

Sohio contends, among other things, (1) that such conditions are erroneously tied to Opinion No. 468 as the opinion is currently under review and subject to revision or modification by the United States Court of Appeals for the Tenth Circuit; (2) that since Docket No. G–17012 is consolidated in the Show Cause proceeding in Docket No. AR61–1, issued August 5, 1965, 34 FPC 424, the price, quality and moratorium conditions should be established by the Show Cause proceeding; and (3) that Sohio would consider accepting conditions which provide for a 16.0¢ per Mcf rate, a refund obligation with interest at 7% per annum from the date of initial deliveries down to 14.5¢ per Mcf, after adjusting for quality, as may be prescribed in the Show Cause proceeding, and a rate increase moratorium to January 1, 1968, for any rate in excess of that determined by the Commission in the Show Cause proceeding.

We do not find Sohio's arguments convincing. Similar arguments were made in *Union Oil Company of California*, Docket No. CI65-683, and were rejected in our order issued on December 20, 1965, 34 FPC 1505. The outcome of the pending court review of Opinion Nos. 468 and 468-A may affect the initial rate at which we permanently certificate Sohio's sale after the hearing we have ordered in our Show Cause proceeding, but the pendency of that appeal does not affect our conclusion that the prices we arrived at in the Permian case should serve as the guideline prices for new sales in lieu of the prices we had previously set in Statement of Policy No. 61-1. Similarly the existence of appeals from our Permian decision has not resulted in our reverting to an 11 cent increased rate ceiling prescribed in the Policy Statement in lieu of the higher prices set by Opinion Nos. 468 and 468-A.

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[1] This temporary relates only to acreage covered by the supplemental contract of February 1, 1966, between Sohio and El Paso.

Sohio has been authorized under the subject temporary to collect prior to any hearing on its application the applicable new guideline rate established in the light of our Permian opinion.[2] In our Show Cause proceeding, Sohio will be afforded an opportunity to show why some higher price is warranted. In the meantime, if it wishes to operate on an emergency temporary certificate prior to the time when all interested parties can have their opportunity to state their cases, it must do so pursuant to the reasonable conditions we have imposed.

The Commission orders:

For the reasons set forth above, Sohio's application for rehearing or reconsideration of the Commission's letter-order of April 8, 1966, in Docket No. G-17012 is denied.

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[2] The temporary issued to Sohio on May 21, 1964, authorizing a 16¢ rate for other sales in this same proceeding was granted prior to the Commission's Permian decision.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KNOXVILLE UTILITIES BOARD, ET AL. v. EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. RP65-4

ORDER CLARIFYING AND AMENDING OPINION NO. 488

(Issued June 7, 1966)

By Opinion No. 488 and order issued April 19, 1966, 35 FPC 534, we determined the just and reasonable rates to be charged by East Tennessee Natural Gas Company from and after our decision and until changed by further order. The specific rates for the various rate schedules were set out in Appendix C to the Opinion. By ordering paragraph (C), East Tennessee was placed under obligation to continue to flow-through to its customers all refunds and rate reductions received from its supplier, Tennessee Gas Pipeline Company (TGP),[1] as agreed in the settlement approved December 16, 1960, 24 FPC 1079.

By a filing made May 10, 1966, Knoxville Utilities Board, *et al.* requested that the Opinion be clarified in a manner as hereafter set out. On May 11, East Tennessee, filed an application for rehearing also seeking the same clarification and, in addition, citing as error our adoption of the examiner's deduction of $60,000 from system operating expenses for the estimated savings in labor costs arising from the automation of certain compressor stations.

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[1] Formerly Tennessee Gas Transmission Company.

The rate design contained in Appendix C to Opinion No. 488 was based on staff exhibits in the record showing purchased gas costs from TGP and revenues of East Tennessee at the rate levels operative October 1, 1964. In so doing we inadvertently failed to reflect the effect of a TGP rate reduction which became effective January 1, 1965. This rate reduction was intended to be reflected by the provision of ordering paragraph (C), the substance of which was concurred in by East Tennessee. Accordingly, we will reflect TGP's reduced rates in the rates prescribed for East Tennessee.

The further revision requested in East Tennessee's application for rehearing will be granted. East Tennessee points out that the compressor station labor portion of the total operations expense in the cost-of-service is only $28,306 and that deducting $60,000 from this allowance would result in a negative figure. However, neither in the initial decision nor in our opinion was there any indication that the deduction was to be made from this subaccount. Nevertheless, we note that the total transmission operation and maintenance expense allowed for the Virginia extension was $138,900. This includes labor and supplies and expenses in operating and maintaining both the transmission pipeline and the compressor stations, as well as all appurtenant facilities. Upon further consideration we are of the opinion that the compressor station automation which formed the basis of the $60,000 adjustment is not likely to reduce the estimated expenses by over 40 percent. Additionally, we note that East Tennessee's witness reviewed the prior Virginia extension expense estimates in light of the automation and concluded that, overall, they were still valid. We also note that our staff, whose cost-of-service we largely adopted, made no expense adjustment for the automation.

East Tennessee further shows that the purchased gas cost and the labor station expense adjustments offset each other and, consequently, do not affect the prescribed rates. Accordingly, those rates will be affirmed.

The Commission orders:

(A) The request for clarification filed May 10, 1966, by Knoxville, *et al.* and the request filed May 11, 1966, by East Tennessee Natural Gas Company are granted.

(B) The rates set out in Appendix C to Opinion No. 488 are affirmed.

OPINION NO. 494

CHATTANOOGA GAS COMPANY v. EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. RP65-3

OPINION AND ORDER REDUCING MAXIMUM DAILY DEMAND

(Issued June 8, 1966)*

Syllabus

1. Provision imposing a 40,000 Mcf daily contract demand obligation on Chattanooga is unjust and unreasonable and should be modified as herein prescribed. Pp. 904–905; 913.
2. Private contracts cannot restrict the Commission in the fulfillment of its certification responsibilities under the Natural Gas Act. P. 904.

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* Initial decision appears on P. 909. Memorandum Opinion No. 494–A and order issued July 29, 1966 denying rehearing and stay, 36 FPC 325. Petition to Review dismissed, see settlement order issued November 14, 1966, 36 FPC 841.

3. Commission is not restricted from reviewing buyer's incremental needs because of contract provisions permitting wholesaler to deliver gas supplies above those presently delivered. P. 905.
4. To impose upon the Commission the obligations of the parties to a private contract would permit such parties to make determinations specifically delegated by Congress to the Commission. Pp. 905, 906.
5. While acceptance of service agreement legalizes activities thereunder, Commission disclaimer is notice that such acceptance does not constitute agency decision regarding public interest considerations involved in supplying future increments of a gas market. P. 906.
6. Sole supplier clause in gas purchase contract is unjust and unreasonable and cannot be allowed to stand. Pp. 908, 909.
7. Within the meaning of *Sierra Pacific Power Co.*, authorization to file any appropriate partial requirements contract is required by the public convenience and necessity. P. 908.
8. In a proceeding arising under Sections 4(a), 4(b) and 5(a) of the Natural Gas Act, Commission *reduces* maximum daily demand in gas contract.

Norman T. Hayes, Jr. and *J. David Mann, Jr.*, for Chattanooga Gas Company.

William S. Tarver and *Hugh J. Morgan, Jr.*, for Southern Natural Gas Company.

H. F. Aby and *Harold L. Talisman*, for East Tennessee Natural Gas Company.

James L. Bomar, Jr., for Knoxville Utilities Board, United Cities Gas Company, Volunteer Natural Gas Company, Cleveland Natural Gas Company, Athens Utility Board, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Englewood Natural Gas System, First Utility District of Maury County, Gallatin Natural Gas System, Harriman Utility Board, Jefferson-Cocke Utility District, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utilities Board, Madisonville Gas Company, Marion County Natural Gas Company, Middle Tennessee Utility District, Oak Ridge Utility District, City of Rockwood Natural Gas Company, Sevier County Utility District, City of Sweetwater, and Unicoi Natural Gas Utility District.

R. J. Connor, Thomas F. Ryan, Jr. and *William N. Bonner, Jr.*, for Transcontinental Gas Pipe Line Corporation.

Samuel B. Ross for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BLACK, *Commissioner:*

This proceeding involves a complaint filed by Chattanooga Gas Company (Chattanooga) under Sections 4(a), 4(b) and 5(a) of the Natural Gas Act seeking relief from certain provisions in its August 1, 1959 contract with East Tennessee Natural Gas Company (ETN), its sole natural gas supplier at present. The challenged provisions provide in pertinent part:

> * * * Seller (ETN) agrees to sell and deliver to buyer (Chattanooga), and Buyer agrees to purchase and receive from Seller * * * Buyer's requirements of natural gas up to 40,000 Mcf per day * * * (Art. I, p. 1, Exh. 9)

and:

> Buyer agrees that it will not purchase gas, natural or manufactured, from any source other than Seller, and also that it will not manufacture

gas for use or sale, except as expressly authorized by this contract. (Art. I, p. 3, Exh. 9)[1]

Chattanooga seeks to have the 40,000 Mcf maximum daily contract demand reduced to its actual billing demand at the close of this record of 31,558 Mcf per day.[2] Chattanooga contends this reduction is necessary to permit it to purchase additional firm gas from a second supplier, claiming that ETN's prices and service standards hinder its expansion. Chattanooga submitted evidence that Farmer's Chemical Association, its principal industrial customer, is actively seeking other supply sources. To alleviate this situation, Chattanooga has executed a precedent agreement with Southern Natural Gas Company (Southern) and Southern has applied to the Commission for a certificate authorizing the extension of its facilities and the sale of gas to Chattanooga. Transcontinental Gas Pipe Line Corporation (Transco) and ETN have each filed similar proposals to service Chattanooga's needs over its present 31,500 take. These proposals have been consolidated in a comparative certificate proceeding.[3]

In support of its objection to the above-cited contract provisions Chattanooga points out that: (1) Its purchases from ETN have always approximated its billing demand level of 31,558 Mcf rather than the 40,000 Mcf contract demand; and (2) ETN does not have the capacity to maintain a sustained supply of 40,000 Mcf per day and, in fact, has not constructed any facilities in reliance on the contract demand.

ETN is opposed to any relaxation of the provision requiring Chattanooga to take a minimum of 40,000 Mcf a day from it before buying from another supplier. ETN argues that Chattanooga has received the protection of a 40,000 Mcf per day contract demand since 1956, and should not be relieved of that obligation merely because of the possibility of getting gas at a cheaper price from another supplier. Staff and Southern, an intervener, support Chattanooga.

In an initial decision issued April 20, 1965, Examiner Arthur Fribourg recommended reduction of the 40,000 Mcf per day contract quantity to 31,500 Mcf and the complete elimination of the sole supplier provision from the contract on the grounds that the limitation precluded Commission consideration of the proposals pending in the comparative proceeding. The Examiner also (1) denied Staff's request that the sole supplier provision be stricken from all of ETN's service agreements since there is nothing in this record that such a provision is unreasonable as to its other customers; and (2) refused to require ETN to extend its partial requirements schedule since ETN has promised to do so if and when a new supplier is certificated.

We agree with the Examiner's conclusion that the provision imposing a 40,000 Mcf daily contract demand obligation on Chattanooga is unjust and unreasonable. Private contracts cannot restrict the Commission in the fulfillment of its certification responsibilities under the Natural Gas Act. Accordingly, if the 40,000-Mcf limitation would effectively prevent the Commission's considering all of the relevant factors bearing on the gas supply for the Chattanooga market, it could not be recognized as binding upon us. To the extent the Examiner thought otherwise, we disagree with him. The question presented in this case, however, is not whether the contractual provision can act as an inhibition on the Commission, but rather whether as a matter between the parties the contractual provision is unjust and unreasonable and should be set aside or modified pursuant to the provisions of Section 5 of the Act. Whether any action by us in this context is necessary or that any action on the contract would lie should the Commission disregard the contract provisions in its certification action is doubtful. However, in order to remove uncertainty which might inhibit the effectuation of what we have concluded would best serve the public interest, we shall exercise our authority over the contractual provision under Section 5 of the Act.

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[1] Art. I, p. 4, Exh. 9 affords Chattanooga the right to use its own gas generating equipment (propane-air) whenever, in Chattanooga's sole judgment, the use of such equipment is either necessary or desirable.

[2] All volumes are at 14.9 psia.

[3] See *Transcontinental Gas Pipe Line Corp., et al.*, Docket No. CP64–270, *et al.*, Opinion and order issued concurrently herewith, *infra*, p. 917.

We conclude, for the following reasons, that the provision in the contract requiring Chattanooga to purchase its natural gas requirements up to 40,000 Mcf per day is unjust and unreasonable and should be modified to limit Chattanooga's obligation to a maximum of 31,558 Mcf (at 14.9 psia), plus an additional 2,400 Mcf per day, as hereafter described, during such periods as the United States Army purchases gas at this approximate level from Chattanooga for use in its Volunteer Army Ammunition Plant.

Although Chattanooga's firm requirements have approached and even exceeded 40,000 Mcf,[4] the record indicated that its maximum takes of firm gas from ETN during the years 1961–1963 have remained stable between 31,196 Mcf and 31,558 Mcf,[5] which has been supplemented by Chattanooga's use of peak shaving equipment in which it has considerable investment.

Subsequent data filed by ETN of which we take judicial notice indicate that Chattanooga's takes during 1964 and 1965 have been comparable.[6] It is true that Chattanooga has on a temporary emergency basis purchased gas supplies above the 31,500 Mcf level. This occurred once in 1958, when Chattanooga's peak shaving equipment malfunctioned and its demand rose to 35,438 Mcf. Subsequent increased takes have also taken place during January and February of 1966, due to abnormally cold temperatures and snow conditions which prevented the transportation of propane to supply depleted peak shaving supplies.[7] It is evident that Chattanooga's incremental market growth will require additional gas over and above the 31,500 Mcf per day firm takes.

Chattanooga's maximum market requirements and the best method of supplying its incremental needs is not before us in this proceeding. The only issue here is whether the Commission is bound to restrict review of Chattanooga's incremental needs because of the existence of contract provisions permitting the wholesaler to deliver gas supplies above those presently delivered to Chattanooga. We hold that it is not.

Adherence to the present 40,000 Mcf limitation would preclude Commission review of the full range of public interest considerations bearing on 8,000 Mcf of the total incremental gas supply required by the Chattanooga market. The examiner rightly pointed out that although "* * * the instant proceeding has nothing to do with the merits of the proposals * * * they cannot even be heard * * *" if we recognize the higher limitation. While consideration must be given to the equities of the parties, the rights of the consuming public cannot be ignored.

This is a private contract to which the Commission is not a party. To impose upon the Commission the obligations of the parties would permit the parties to make determinations specifically delegated by Congress to this Commission.

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[4] 39,794 Mcf in 1962 and 44,650 Mcf in 1963.

[5] Exhibit 14, Sch. 2A.

[6] ETN files on an annual basis FPC Form No. 2 setting out actual peak day deliveries to Chattanooga. The Form 2 figures are at a pressure of 14.9 psia which corresponds to the pressure applicable to the 40,000 Mcf contract limitation. In 1964, the actual peak day delivery was 31,673 Mcf and in 1965, it was 31,976.

[7] See p. 908 of this opinion.

It is true that ETN has submitted for filing with the Commission service agreements with Chattanooga which have increased the contract demand from 25,000 Mcf to 40,000 Mcf per day.[8] All have been accepted for filing with the express statement that the acceptance does not constitute a waiver of Section 7 of the Natural Gas Act, constituted Commission approval or was a recognition of contractual rights.[9]

While acceptance legalizes activities under the contracts, the disclaimer specifically notifies the parties that the acceptance for filing does not constitute a Commission decision regarding the public interest considerations involved in supplying future increments of a gas market.

Nor is there evidence of the parties having placed any reliance upon the 40,000 Mcf limitation.[10] In fact ETN has admitted in the comparative proceeding of which we take judicial notice that it would be physically impossible to supply the 40,000 Mcf on a sustained basis with existing facilities.[11] Chattanooga, on the other hand, has elected to rely on its peak shaving equipment for service above the 31,500 level.

The record also shows that the 40,000 Mcf provision has no revenue or cost significance to ETN since Chattanooga pays a monthly demand charge based on its actual maximum take during the preceding 12-month period. In addition ETN's argument that Chattanooga has had the protection of the 40,000 Mcf contract demand is more illusory than real. As previously indicated ETN has not constructed the facilities required to provide the 40,000 Mcf. The recent increased takes of Chattanooga illustrate this fact.[12]

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[8] ETN was first certificated to serve the Chattanooga market in *East Tennessee Natural Gas Company,* 7 FPC 5 (1948). Thereafter, service agreements were filed setting out the contract demand. The first service agreement dated August 25, 1950, and effective retroactively to July 29, 1950, provided a 25,000 Mcf per day contract demand. (Tr. 3108) In 1955 this contract demand was changed to 33,600 Mcf per day. (Tr. 3108) In 1956 this contract demand was changed to 40,000 Mcf per day which contract demand remains in force today. The contract was changed in 1959 but this susequent change provided for a new delivery point rather than a new contract demand. (Tr. 1431.)

[9] The disclaimer in substance reads as follows:

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of the service agreement or of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in your tariff; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

[10] Since 1956 and the signing of the contract containing the 40,000 Mcf limitation ETN has not submitted any market requirements in any other proceeding before the Commission indicating actual or estimated takes for Chattanooga above 33,431 Mcf. We take judicial notice of Docket Nos. G-11107, G-18877, CP60-94, CP63-247, CP64-165 and CP65-120, which represent Tennessee Gas Transmission's (supplier of ETN) 1957 through 1965 system expansions. These expansion applications are devoid of data regarding Chattanooga's markets which is indicative of nonreliance. It should be noted that the 1964 TGT expansion application for a design day increase of 22,060 Mcf per day to ETN was based on ETN's Virginia expansion (Docket No. CP64-21) in 1964, 32 FPC 158. TGT's application incorporated ETN's data in ETN's Virginia proceeding by reference. ETN's data in the expansion is especially revealing and we take judicial notice of ETN's Exhibit I, Schedule 2 at page 1 which stated that the actual peak firm day sales of Chattanooga were 31,438 Mcf, 31,196 Mcf and 31,431 Mcf during 1960, 1961 and 1962, respectively. In this exhibit ETN also estimated that the peak firm sales for the years of 1963 through 1966 for Chattanooga as being 31,431 Mcf, 31,930 Mcf, 32,431 Mcf and 32,931 Mcf, respectively. The latter figures have been adjusted to reflect the 14.9 psia applicable to the contract containing the 40,000 Mcf limitation. The figures appearing in the exhibit are somewhat higher since they were based on a pressure of 14.73 psia.

[11] Docket No. CP64-270, v. 23, at pp. 2457-59 where ETN's witness states that its maximum capacity for Chattanooga would be 34,000 Mcf per day on a sustained basis.

The record shows that ETN has held itself ready to provide service to the 31,500 level, and that Chattanooga has in fact accepted that service. Further, this Commission in the various proceedings before it has recognized ETN's rights and obligations in providing service at this level. We shall continue to do so.

There has arisen a new problem relating to this market which should be disposed of in this proceeding. In the course of oral argument in the comparative proceeding, of which the opinion and order are issued concurrent herewith, the Counsel for the Department of the Army reported a new, emergency gas requirement of the Army for service at Chattanooga in connection with the current military operations. Counsel for East Tennessee assured the Commission, as did Chattanooga, that every effort would be made to insure the maintenance of adequate service to the Army for the duration of this emergency requirement. In order that there may be no dispute as to the legal basis and obligations pertinent to this service, we shall recognize the East Tennessee-Chattanooga contract demand, as otherwise established herein, in the additional amount of 2,400 Mcf per day for so long as the Army shall continue to require this new service.

Staff also argues that the sole supplier clause in Article I of the service agreement (the second provision set out on page 903 of this opinion) is unlawful. By its terms it constitutes an absolute bar on Chattanooga's right to "purchase gas * * * from any source other than the seller" including increments over and beyond those it has presently contracted to take from ETN. So construed there would be grave doubt as to whether the provision, which would preclude the Commission from ever determining that a second supplier would better serve the public convenience and necessity, would be consistent with public policy as expressed in the Natural Gas Act. See *Lynchburg Gas Co.* v. *Federal Power Commission*, 336 F. 2d 942 (CADC–1964); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881 (CADC–1948), certiorari denied 335 U.S. 854.

We do not need to consider here, however, whether there may be situations in which a sole supplier clause could validly preclude an additional pipeline from supplying gas to the original pipeline's customer, since ETN expressly disclaims any intent to have the sole supplier clause in its service agreement with Chattanooga have any such effect. Instead, it argues that the provision must be read in context of the 40,000 contract demand provision discussed above, and operates in lieu of a minimum billing requirement in ETN's standard rate schedule. It is not at all clear how the sole supplier clause serves to achieve this objective. As ETN recognizes, as long as it remains Chattanooga's sole supplier no minimum quantity limitation is necessary; given another supplier the clause is meaningless as a protective device. Presumably, however, it could be argued that the clause operates to preclude the buyer (Chattanooga) from taking any additional gas from a new supplier until it first purchases the full amount of its contract demand from ETN. Assuming this to be the case, however, we believe it clear that any such 100 percent load factor requirement (even one contingent on the purchaser's taking that much gas from all sources)[13] is unjust and unreasonable and cannot be allowed to stand.

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[12] The recent increased demand has been met by ETN by securing 7,000 Mcf per day through an emergency interconnection with Texas Eastern Transmission Corporation and by the installation of temporary compressors under an emergency authorization. We take official notice of a letter dated January 31, 1966, from T. K. Davis, President of ETN, to the Commission outlining the volumes purchased by ETN from Texas Eastern and two letters dated January 21 and 31, 1966, informing the Commission of the emergency installation of portable compressors pursuant to Sec. 157.22 of our Rules and Regulations. A request for a 30-day extension to continue operation of the compressors was granted by letter-order dated April 14, 1966.

We wish to make clear that, when a new supplier is certificated to serve a particular distributor, there may well be circumstances in which the existing pipeline will be able to show that public convenience and necessity involved in its continuing operations, with respect to that and other customers, require action to protect against any substantial loss of the volume of sales it had been making to the distributor securing a new source of gas. The solution to this problem lies not in any additional restriction, such as that attempted here, but in a properly tailored partial-requirements clause—such as ETN itself has put into effect in Zone 3, where it is a second supplier. To make this clear, our action herein will be expressly made subject to the right (which ETN would in any event have) to file, pursuant to the provisions of Section 4 of the Act, any such partial-requirements tariff—including provisions therein specifying minimum takes approximating the average volumes it has been selling to Chattanooga—as it can justify within the meaning of the rule laid down in the *Lynchburg* case, *supra*.[14] And while we doubt that any contractual inhibition on such a filing exists under the Mobile doctrine,[15] we shall herein expressly find that, within the meaning of the test of the *Sierra Pacific Power Co.* case,[16] authorization to file any appropriate partial-requirements contract is required by the public convenience and necessity.

The remaining issues are procedural. On June 28, 1965, ETN filed a motion and brief for leave to file a reply to Staff's brief opposing exceptions. Objections to the motion were submitted by Chattanooga and Southern Natural. Upon examination, we find that the matters covered in the motion and brief were amply discussed in ETN's exceptions to the initial decision. Moreover, replies to briefs opposing exceptions are not provided for in our Rules of Practice and Procedure. We do not believe that waiver of our rules is required in these circumstances. The motion is denied.

The second relates to ETN's recently filed motion to reopen the proceeding and to dismiss the complaint. ETN alleges that Chattanooga's takes during the months of January and February have increased to a maximum of 43,782 Mcf and have held constant in a range of 39,000 to 43,000 Mcf during the last and first week of January and February, respectively. ETN argues that these increases indicate that Chattanooga's requirements are substantially equal to the 40,000 Mcf contract demand and there is no reason for reducing the contract provisions. Chattanooga and Southern filed answers opposing the reopening of the record.

We deny ETN's motion for the reasons set out in this opinion. Even if Chattanooga's requirements have increased as alleged by ETN the motion must be denied since a private contract cannot prevent Commission consideration of the method best suited to meet Chattanooga's incremental market growth.

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[13] It is to be noted that ETN never has contended that Chattanooga must take up to 40,000 Mcf of gas from it in preference to gas from Chattanooga's peak shaving (propane) operations.

[14] We see no basis for staff's exception to the examiner's failure to *order* ETN to file a partial-requirements rate schedule. This is a matter for ETN to decide for itself.

[15] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

[16] *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

The Commission further finds:

(1) ETN is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this opinion and order, are sales of natural gas in interstate commerce and are subject to the jurisdiction of this Commission.

(2) The provisions of the gas sales contract are unjust and unreasonable under Section 5(a) of the Natural Gas Act to the extent that they require Chattanooga to purchase its first 40,000 Mcf per day of natural gas from ETN.

(3) The gas sales contract referred to in paragraph (2) above will not be contrary to the requirements of the Natural Gas Act if the maximum daily demand is limited to a volume of 31,558 Mcf at 14.9 psia or 31,922 Mcf at 14.73 psia, plus the additional volume of 2,400 Mcf per day to be delivered by Chattanooga to serve the requirements of the Volunteer Army Ammunition Plant.

(4) The sole supplier provision appearing in Article I at p. 3 and set out on page 903 of this opinion is in its entirety contrary to the requirements of the Natural Gas Act.

(5) Except as otherwise granted herein, the exceptions to the initial decision should be denied.

The Commission orders:

(A) Any and all provisions of the existing gas sales contract (service agreement) between ETN and Chattanooga under which the former agrees to sell and the latter agrees to buy the latter's full requirements of natural gas up to 40,000 Mcf per day, or which limit to a maximum of 40,000 Mcf per day the former's obligation to sell and the latter's obligation to buy, or which describe such obligation as the "maximum daily demand," are hereby modified by substituting "33,958 Mcf" (at 14.9 psia) for "40,000 Mcf," said modifications to be effective from and after the date of issuance of this Opinion and order and to continue in effect until otherwise ordered by this Commission.

(B) The sole supplier provision appearing in Article I at p. 3 and set out on page 903 of this opinion is void and is ordered stricken.

(C) Within 30 days after the date of issuance of this Opinion and order ETN shall file a supplement to its currently filed service agreement reflecting the changes ordered in paragraphs (A) and (B) above, said supplement to be subject to the approval of the Commission.

(D) ETN may file a partial-requirements rate schedule for service in its Zone 1, satisfactory to the Commission, as provided for in the Opinion.

(E) The motion filed by ETN for leave to file a reply to staff's brief opposing exceptions is denied.

(F) The petition of ETN to reopen the proceedings is denied.

(G) Except as herein granted, the exceptions to the Examiner's decision are denied.

(H) The Examiner's decision, to the extent consistent herewith, is hereby adopted as part of this Opinion and order.

INITIAL DECISION

OF THE PRESIDING EXAMINER MODIFYING CONTRACT FOR SALE OF NATURAL GAS

(Issued April 20, 1965)

FRIBOURG, *Presiding Examiner:* Complainant Chattanooga Gas Company (Chattanooga) is a distributor of natural gas in and near the city of Chattanooga, Tennessee. It seeks relief from certain provisions of the contract under which it buys natural gas from its sole supplier, East Tennessee Natural Gas Company. Chattanooga now takes, as a firm service demand from East Tennessee, a maximum of 31,500 Mcf per day out of its entitlement of 40,000 Mcf. It asks relief from those provisions of the agreement which prohibit it from obtaining gas in excess of 31,500 Mcf from sources other than East Tennessee.

The contract constitutes the service agreement which is on file with the Commission. Two of its provisions are challenged. The first provides that Chattanooga will purchase its

> * * * requirements of natural gas up to 40,000 Mcf per day, for delivery by Buyer in the municipality of Chattanooga, Tennessee or within the contract area shown on the attached map.

The second provides:

> Buyer agrees that it will not purchase gas, natural or manufactured, from any source other than Seller, and also that it will not manufacture gas for use or sale, except as expressly authorized by this contract.

It also asks that East Tennessee be required to offer Chattanooga, when Chattanooga desires it, a new service agreement in the form provided for CPR (contract partial requirements) service with a contract demand not in excess of the peak day firm deliveries by East Tennessee to Chattanooga during the immediately preceding twelve months.

The contract under which Chattanooga buys from East Tennessee is dated August 1, 1959, and supersedes one dated September 13, 1956 with which it is identical except for a change in delivery point, not material here. Prior agreements go back to 1950, when service was commenced on a basis of a firm peak day demand of 25,000 Mcf, which was increased to 30,100 Mcf in 1954 and to 40,000 Mcf in 1956. There have been lengthy negotiations between the two companies over a period of years, but the relationship has been an uneasy one. Among other difficulties, witnesses cite Chattanooga's problem in retaining its largest customer for interruptible gas, Farmers Chemical Association, which, they say, cannot afford to buy firm gas and suffered excessive curtailments of interruptible. The loss of this customer would be a severe blow to Chattanooga, which derives about one-eighth of its total revenues from Farmers Chemical.

Chattanooga's proposed answer to this and other difficulties is to begin buying natural gas from an additional supplier. It has signed a precedent agreement with Southern Natural Gas Company. Transcontinental Gas Pipe Line Corporation (Transco) has also asked this Commission for authorization to extend its facilities and sell gas to Chattanooga. Chattanooga, though it supports Southern's proposal, would find Transco's acceptable if the Commission approves it. Both proposals are being heard in a certificate proceeding, Docket No. CP64–270, *et al.* A proposal by East Tennessee for an increase in its capacity which would result in, among other things, additional service to Chattanooga, is also being heard in the same proceeding. East Tennessee argues that Chattanooga is in no danger of loss of Farmers Chemical as a customer, since all the pending proposals include sales to Chattanooga for resale to Farmers Chemical. However, East Tennessee's witness testified that East Tennessee approached Farmers in August, 1964, with regard to the possibility of a direct sale, and it seems clear that the present situation is not a comfortable one for Farmers.

Chattanooga urges several grounds in support of its complaint. It argues first, that this Commission has the power to modify the contract language involved and should do so in order that it may act properly in the pending certificate case, or future certificate cases. Second, it argues that the challenged provisions violate public policy as expressed in the antitrust laws, in particular Section 3 of the Clayton Act. Third, the territory served by Chattanooga would benefit from an additional source of natural gas. And fourth, the tariff as it now stands is discriminatory in that partial requirements service is available to East Tennessee's jurisdictional customers in Virginia but not in Tennessee, while the schedule under which Chattanooga now buys is available in Tennessee but not in Virginia.

Intervener Southern Natural takes the position that East Tennessee's interpretation of the tariff as requiring Chattanooga to buy up to 40,000 Mcf per day from it before buying elsewhere is unjust and unreasonable, not in the public interest and contrary to East Tennessee's past and present methods of doing business. It argues for something which Chattanooga does not ask either in its complaint or in the relief sought in its briefs, namely, that the present tariff, properly interpreted, gives Chattanooga the right to switch from the "G" schedule, which it is now on, to a "CR" schedule with a contract demand of approximately 31,500 Mcf, without extending its existing service agreement. (In its reply brief, Chattanooga mentions this for the first time, but apparently only to show the errors in East Tennessee's arguments on the reasonableness of the tariff, rather than as an affirmative basis for such relief.)

East Tennessee argues with vigor that the present contract is a legal and binding one arrived at through free negotiation, that Chattanooga had tried to obtain an even larger commitment from East Tennessee, and that the present 40,000 Mcf figure was reasonable when negotiated in 1956 and renewed in 1959. Chattanooga, it says, has received the benefits of the contract for years and should not now be relieved of its obligations, and it further argues that differences existing among East Tenessee's charges are not unreasonable or unduly discriminatory and that there is no antitrust violation. It states that it will file a partial requirements schedule in Zone 1 (Chattanooga's zone) should a second supplier be certificated, and that in that event Chattanooga would be bound only up to the 40,000 Mcf figure.

Staff argues that the "monopoly provision" of the service agreement should be held unlawful and that East Tennessee should be required "to tender for filing a new 'form' of service agreement subject to the Commission's review and approval," that East Tennessee should be required to offer Chattanooga a CR service contract, and that it should also be required "to tender for filing a CPR, partial requirements rate schedule in Zone 1, subject to Commission's review and approval as to its terms." Staff chose not to file any answering brief in response to the contentions of the other participants.

Discussion of the Issues

Chattanooga, as the complainant, has the burden of proof. Its first step is to show that the Commission has the power to grant the relief requested. East Tennessee challenges this. The Examiner has no doubt of the correctness of Chattanooga's position in this regard, for the following reasons.

Section 5(a) of the Natural Gas Act requires that when the Commission finds that a contract affecting a rate charged by a jurisdictional pipeline to a distributor is unjust, unreasonable, unduly discriminatory or preferential, it must determine what is a just and reasonable contract and fix it by order.

There is no conflict between this plain language of the Act and any of the cases decided under it. East Tennessee says that Chattanooga's proposal "would make a mockery of contracts under the Act in the light of the express ruling in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*" This is not so. The relief sought is not inconsistent with the *Mobile* case. That case upholds the integrity of contracts as between the parties thereto. It holds that the Act "* * * does not give natural gas companies the right to change their rate contracts by their own unilateral action." *Id.*, 350 U.S. 332, 337. It also recognizes the Commission's "* * * power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them." *Id.*, p. 341. And again, "* * * denying to natural gas companies the power unilaterally to change their contracts in no way impairs the regulatory powers of the Commission, for the contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest." *Id.*, p. 344. East Tennessee's position to the contrary is plainly without merit. Any contract subject to the Act is subject to revision in accordance with the Act.

We turn then to the question whether the provisions of the contract are unjust, unreasonable, unduly discriminatory or preferential. A positive finding to this effect is a prerequisite to a change. A mere finding that the proposed relief would result in a reasonable contract would be insufficient. *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348.

In considering the reasonableness of the challenged provisions of the contract, it is important to realize that they do not affect any sale of gas now under way. East Tennessee does not sell, and Chattanooga does not buy, any gas above 31,500 Mcf, and sales up to that amount would be left undisturbed by the relief demanded. The provisions embody, not an agreement to buy from anyone, but rather an agreement *not* to buy from anyone except East Tennessee, and they would come into effect only in the event that Chattanooga needs more gas than it now takes.

What we have, then, is an agreement by East Tennessee to supply Chattanooga with additional gas if needed, up to 40,000 Mcf, and by Chattanooga not to turn to anyone else for additional supplies up to that figure. The question is whether this agreement is unjust, unreasonable, unduly discriminatory or preferential in the circumstances here presented.

Those circumstances include the fact that other proposals to supply an additional quantity of gas are now pending before another Examiner. There is no suggestion that these proposals are frivolous or not worth consideration, yet East Tennessee's position, if sustained, would prevent them from being considered, however much the public convenience and necessity might require the certification of one or another of them. The instant proceeding has nothing to do with the merits of the proposals, but unless relief is granted here they cannot even be heard. If they are not in the public interest they will presumably be denied. East Tennessee's position therefore could be effective only to block a proposal which the public convenience and necessity requires; a proposal not so required would fail in the ordinary course of the certificate proceeding. To urge that it should not even be heard is an invitation to the Commission not to regulate.

Such an invitation betokens a situation that is unjust and unreasonable. This is so not because of any attitude of the Commission towards regulation but by reason of the purposes of the Natural Gas Act. Section 7(g) of the Natural Gas Act expressly empowers the Commission to grant certificates to serve an area already being served by a natural gas company. Private persons cannot contract to strip the Commission of this power. In *Lynchburg Gas Co.* v. *Federal Power Commission*, 336 F. 2d 942, Judge Washington said (at pp. 949–50):

> * * * the welfare of the ultimate consumer is the acknowledged desideratum of the Natural Gas Act. * * * Investors in the natural gas industry, although granted an *opportunity* for a "fair return," are by no means guaranteed freedom from risk or competition. Such assurance would, in a case such as this, deprive competitors of the right to compete, inhibit efficient allocation of resources and deny ultimate consumers the lowest prices to which they are entitled.

The "welfare of the ultimate consumer" is eroded by contracts designed to prevent consideration of proposals which the public convenience and necessity may require, and the Natural Gas Act is not a shield for such agreements. The *Lynchburg* opinion just cited quotes the following passage from *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, 884, cert. denied 335 U.S. 854:

> [N]othing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two, or intended for any reason to give an existing supplier of natural gas for distribution in a particular community the privilege of furnishing an increased supply.

We need not consider here what factors might come into play if the aim of this litigation were to shift a current sale from one pipeline to a competitor. This complaint is concerned with the present obstacle to the furnishing of an increased supply. The furnishing of the current one is unaffected, there being no attempt to change the source with respect to the amounts of gas Chattanooga is now buying.

The foregoing considerations lead to the conclusion that the contract as it now stands is unjust and unreasonable, and the Examiner so holds.

This holding is made in the light of the provisions of the Natural Gas Act, leaving aside considerations of antitrust law. It cannot be said whether or not a record full enough to permit an analysis of the "line of commerce" and the "relevant market of effective competition" would result in a finding of an antitrust violation. See *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320. The most that can be said here is that this record does not permit such a finding, and Chattanooga's claim in this regard is held to be not proved. The findings, conclusions and order in this decision therefore rest on the Natural Gas Act alone.

Chattanooga's argument that the territory it serves would benefit from an additional source of gas is not properly raised in this proceeding. That question will be decided in the certificate case. The basic question here is whether there should be a certificate proceeding at all. During this hearing the Examiner refused to receive evidence offered by East Tennessee tending to show the economic effect of proposals now pending in the certificate proceeding. Had he received it and used it as a basis for denying the requested relief, it would have been a prejudgment of the certificate proceedings. However cogent the evidence may have been with respect to the pending proposals, it could not be accepted to show their lack of merit since their merits are not here in issue. Counsel for Southern Natural, in arguing the motion to strike, had the following colloquy with the Examiner regarding exhibits showing the impact of the proposals on East Tennessee and an exhibit showing comparative costs of gas under the pending proposals:

> Mr. MORAN: * * * Mr. Examiner, as Mr. Bomar has just said and as I think you said, if you grant Chattanooga Gas every bit of the relief they ask in this proceeding, that is not going to get Southern Natural or Transco

> into Chattanooga. There are some folks across the hall that have something to say about that, and East Tennessee is over there having a lot to say about it. Consequently, let us not litigate the impact situation twice and the gas cost issue twice when it is being litigated over there, because—
>
> PRESIDING EXAMINER: The question here is whether or not you should be allowed to go across the hall.
>
> Mr. MORGAN: That is correct. * * * The impact studies are in the wrong forum.

As for Chattanooga's remaining argument to the effect that the tariff is discriminatory in denying partial requirements services which are available in other areas, it will be seen that the relief granted, though based on grounds heretofore stated, disposes of this complaint as well.

East Tennessee's arguments that the contract was reasonable when written and renewed, and that Chattanooga, having received the benefits for years, should not now be allowed to shed the correlative obligations, is not to the point. It ignores the present and future public convenience and necessity, which the Commission is bound by law to consider. Whether a contract should be revised cannot be decided solely in the light of its fairness as between the parties at some time in the past. The public has an equity. This contract is unjust and unreasonable at the present time because it would bar Commission consideration of proposals which may reasonably result in lower prices to the ultimate consumer.

Relief

The Act requires that when the Commission, after hearing, finds a contract to be unjust or unreasonable, it shall determine the just and reasonable contract to be thereafter observed and enforced and shall fix it by order. We proceed to the question of what relief is just and reasonable.

The General Terms and Conditions of East Tennessee's tariff (which are made a part of the various rate schedules) set forth a "standard form of service agreement" to be entered into by buyers taking firm service. The contract between East Tennessee and Chattanooga followed the form and provides in part as follows:

> * * * Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller * * * Buyer's requirements of natural gas up to 40,000 Mcf per day, * * *
>
> Under no circumstances shall Seller be obligated to sell and deliver to Buyer or Buyer be obligated to purchase and receive from Seller in any one day a maximum quantity of natural gas in excess of 40,000 Mcf; * * *
>
> Buyer agrees that it will not purchase gas, natural or manufactured, from any source other than Seller, and also that it will not manufacture gas for use or sale, except as expressly authorized by this contract. * * *

Striking the last-quoted sentence above, and replacing "40,000" with "31,500" wherever it appears in the contract[1] would be a grant of the requested relief. For the following reasons, the Examiner finds this result to be just and reasonable.

It is undisputed that Chattanooga's present takes are substantially up to a maximum of 31,500 Mcf per day. Therefore the other customers of East

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[1] In Article II of the contract the "Max. Daily Demand" is referred to as 40,000 Mcf.

Tennessee would be unaffected by such a change. It is significant that these customers, who intervened in this proceeding, sided with Chattanooga rather than with East Tennessee. These so-called "East Tennessee Intervenors" filed, in lieu of a brief, a statement of position in which they said:

> * * * Chattanooga Gas Company should in this proceeding be granted the right to purchase gas from a second source of supply, subject to the certificating provisions of the Natural Gas Act in appropriate proceedings.

Consequently, it is concluded that the relief is reasonable as to East Tennessee's customers.

There is no contention here that East Tennessee's rates are unreasonable. Presumably if that company goes on selling the same amounts of gas at the same price as before, it will not have been deprived of its right to a reasonable return. Should it later claim that its rates are inadequate, the road to relief is open.

One may wonder why, if Chattanooga is to be relieved of the exclusivity provisions of the contract to the extent of allowing a new supplier to have his proposal considered, East Tennessee should not be relieved of the prohibition against selling in Chattanooga's area. The short answer is that East Tennessee has not asked for such relief even if Chattanooga is given the relief it asks. Second, the Act requires that modifications in a contract be made only after hearing, and this proceeding has not been concerned with this point. It is possible that in a complaint by East Tennessee seeking such relief, Chattanooga might advance considerations against it which it had no cause to advance here. Third, the present record provides no basis for holding this provision to be unjust and unreasonable, because in the absence of any proposal by East Tennessee to sell in Chattanooga's area, the prohibition against doing so has no effect. If it has no effect, it cannot be held to be unjust or unreasonable. Fourth, if at any time East Tennessee makes such a proposal, it can follow the same road to relief that Chattanooga has traversed here.

The foregoing considerations make it clear that the relief is reasonable to East Tennessee itself with respect to both what it provides and what it does not provide. The only change in East Tennessee's position is that the exclusivity feature is being stricken from a sale it is not now making and may never make, *i.e.* the sale to Chattanooga of volumes between 31,500 and 40,000 Mcf.

Staff urges that the exclusive requirement provisions of East Tennessee's form of service agreement causes undue discrimination against all those of its customers who are subject to it, and would require East Tennessee "to tender for filing a new 'form' of service agreement subject to the Commission's review and approval." There is nothing in the record to show that other customers are discontented with their present agreement, that the agreement is unjust and unreasonable with respect to them, that the quantities they have contracted for are excessive, or that their obligation to East Tennessee with respect to their present purchases deprives them of any desired freedom of action for the future. It may well be to their benefit to continue their present relationship with East Tennessee. In any event, the present record shows no reason to disturb that relationship. If any of them desires to disturb it, he may make his own showing.

Neither is it necessary to require East Tennessee "to tender for filing a CPR, partial requirements rate schedule in Zone 1, subject to Commission's review and approval as to its terms," as Staff would have it do. East Tennessee has already said it would do that when a new supplier is certificated, but the relief herein granted makes that unnecessary, and avoids further Commission proceedings. Nor does any reason appear for ordering East Tennessee to offer Chattanooga CR service, which Chattanooga has not asked for but which Staff says should be offered it. All parties concede that Chattanooga has the right to contract for CR service. East Tennessee claims that if it does so its contract demand must be 40,000 Mcf per day, but the basis for this claim would no longer exist if Chattanooga is relieved of the 40,000 Mcf exclusive requirements provision in its present contract. The relief Staff proposes in this respect would be pointless even if Chattanooga wanted it.

FINDINGS AND CONCLUSIONS

The Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated:

(1) The contract between East Tennessee and Chattanooga for the sale of natural gas is subject to the jurisdiction of the Federal Power Commission by virtue of the Natural Gas Act, including Section 5(a) of that Act.

(2) Said contract is unjust and unreasonable to the extent that changes therein are prescribed in the following order.

ORDER

It is ordered,

(A) that any and all provisions of the service agreement under which East Tennessee agrees to sell and Chattanooga to buy Chattanooga's requirements of natural gas up to 40,000 Mcf per day, or which limit to a maximum of 40,000 Mcf per day, East Tennessee's obligation to sell and Chattanooga's obligation to buy, or describing said obligation as a "maximum daily demand" shall be modified by substituting "31,500 Mcf" for "40,000 Mcf,"

(B) that any and all provisions of said service agreement whereby Chattanooga agrees not to purchase natural gas from any source other than East Tennessee, and that it will not manufacture gas for use or sale, except as expressly authorized by said service agreement, shall henceforth be void and of no effect, and

(C) that East Tennessee shall, within 45 days after the date of this decision and order, tender to Chattanooga a new service agreement identical with the present one except for the modifications hereinabove ordered, and upon Chattanooga's execution thereof not later than 15 days after said tender, shall forthwith file said new service agreement with this Commission in substitution for the present one.

ARTHUR H. FRIBOURG,
Presiding Examiner.

OPINION NO. 493

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–270; SOUTHERN NATURAL GAS COMPANY, CP64–259, CP64–314; EAST TENNESSEE NATURAL GAS COMPANY, CP65–66; TENNESSEE GAS TRANSMISSION COMPANY, CP64–165; CITY OF BUFORD, GEORGIA, CP65–11, CP65–20; CITY OF SUGAR HILL, GEORGIA, CP65–10, CP65–19; CITY OF AUSTELL, GEORGIA, CP65–74

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND REMANDING PROCEEDINGS

(Issued June 8, 1966)*

Syllabus

1. Approval of Southern's applications for service to Chattanooga in preference to competing applications for initial or increased service to this market area is required by present and future public convenience and necessity. Pp. 919; 924; 945.
2. Proposals for additional service to the Atlanta area should not be certificated on this record—proceedings are remanded to permit Southern and Transco to support their applications consistent with findings here. Pp. 920; 926.
3. Where issues have been fully tried and briefed, it is appropriate to resolve them and so avoid duplicate effort at remanded proceedings. [*infra* note 4]. P. 926.
4. In remanding issue of additional service to Atlanta area, Commission finds Transco's proposal superior to Southern's and that certification of the former would have no significant impact on Southern. Pp. 926; 928.
5. Transco's historic policy of not constructing lateral extensions does not preclude it from changing such policy providing new policy is reasonable and non-discriminatory. P. 926.
6. In a proceeding arising under Section 7 of the Natural Gas Act, Commission *grants in part* and *denies in part* applications for certificates of public convenience and necessity and *remands* proceedings.

William N. Bonner, Jr., *William H. Davidson, Jr.*, *Richard J. Connor* and *Thomas F. Ryan, Jr.* for Transcontinental Gas Pipe Line Corporation.

William S. Tarver and *Hugh J. Morgan, Jr.* for Southern Natural Gas Company.

Thomas B. Taylor, Jr., *W. C. Braden, Jr.*, *Frank E. Barnett* and *Harold L. Talisman* for East Tennessee Natural Gas Company.

Jacob Goldberg, *Albert G. Norman, Jr.* and *W. L. Lee* for Atlanta Gas Light Company.

H. H. Millyer, Jr. for Savannah Gas Company.

Stanley M. Morley and *Louis Flax* for Carolina Pipeline Company.

Peyton G. Bowman, III and *Richard M. Merriman* for Alabama Gas Corporation, Mississippi Valley Gas Company and South Carolina Natural Gas Company.

Norman T. Hayes, Jr. and *W. D. Spears* for Chattanooga Gas Company.

Alfred T. MacFarland for Farmers Chemical Association, Inc.

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* Initial decision appears on p. 930. Clarified and amended; rehearing denied, Opinion No. 493–A issued July 29, 1966, 36 FPC 335. See order of September 9, 1966, on remanded issue, 36 FPC 610. Petition to Review dismissed, see settlement order issued November 14, 1966, 36 FPC 841.

James L. Bomar, Jr. for East Tennessee Intervenors-Knoxville Utilities Board, United Cities Gas Co., Cleveland Natural Gas Co., Athens Utility Board, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Englewood Natural Gas System, First Utility District of Maury County, Gallatin Natural Gas System, Harriman Utility Board, Jefferson-Cocke Utility District, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utilities Board, Madisonville Gas Co., Marion County Natural Gas Company, Middle Tennessee Utility District, Oak Ridge Utility District, City of Rockwood Natural Gas Company, Sevier County Utility District, City of Sweetwater and Unicoi Natural Gas Utility District.

Horace E. Richter, Harold S. Willingham and *Jimmy McFerrin* for City of Austell Natural Gas System.

Edward B. Hipp for North Carolina Utilities Commission.

J. Harry Mulhern, Edward S. Kirby and *James R. Lacey* for Public Service Electric and Gas Company.

George Shuff for Tennessee Public Service Commission.

Albert J. Feigen and *Patrick G. Sullivan* for Cities of Buford and Sugar Hill, Georgia.

Eugene N. Collins for City of Chattanooga.

Alan R. Squires, Hubert E. Squires and *Joseph C. Bruns* for Pennsylvania Public Utility Commission.

John Shofner for Knoxville Utility Board, *et al.*

Carlton C. McCamy and *John T. Miller* for The Water, Light and Sinking Fund Commission of the City of Dalton, Georgia.

John T. Miller for Intercoastal Gas Corporation.

Curtis L. Wagner, Jr. for Office of Judge Advocate General, Department of the Army.

George P. Lewnes for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

This is a comparative proceeding on competing applications for certificates of public convenience and necessity filed pursuant to Section 7(c) of the Natural Gas Act proposing sales for resale of natural gas within the States of Tennessee and Georgia, and seeking authorization for the installation of the facilities necessary therefor. The case also involves certain applications under Section 7(a) of the Act for orders directing the establishment of new delivery points.

The principal controversies are raised by competitive proposals to serve additional volumes of natural gas to Chattanooga Gas Company (Chattanooga) and Atlanta Gas Light Company (Atlanta Gas). In the Chattanooga market, East Tennessee Natural Gas Company (East Tennessee) is now the sole supplier. Chattanooga seeks a second supplier. Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. CP64–270 and Southern Natural Gas Company (Southern) in Docket No. CP64–314 have made mutually exclusive proposals to serve Chattanooga, while East Tennessee in Docket No. CP65–66 has proposed additional service to the Chattanooga market. Atlanta Gas, which distributes gas to communities throughout Georgia, is currently supplied primarily by Southern, but it also purchases gas from Transco and South Georgia Natural Gas Co. In this case, Atlanta Gas proposes to purchase additional volumes from Transco at three new delivery points or, if this application is denied, from Southern.

Southern and Transco also request authority to meet the additional gas requirements of the Water, Light and Sinking Fund Commission of the City of Dalton, Georgia (Dalton), a community presently served by Southern, and of Atlanta Gas at the Ringgold delivery point in northwestern Georgia. Transco requests authorization to serve the initial requirements of Intercoastal Gas Corporation (Intercoastal) which proposes new gas service to five communities in northwest Georgia. Determination of these matters and of the service requests by the Georgia cities whose applications have been consolidated in these proceedings (City of Buford, City of Sugar Hill and City of Austell) depend in large measure on the determinations made with respect to the Transco and Southern proposals to serve Chattanooga and Atlanta Gas.

The proceedings are before us at this time for decision following oral argument heard May 3, 1966, on exceptions to Examiner Ames W. Williams' initial decision issued December 21, 1965, *infra*, p. 930.[1] In essence, the examiner granted Southern authority to serve Chattanooga, denying the competitive proposals by East Tennessee and Transco, and also substantially denied both Southern's and Transco's requests to serve additional gas to Atlanta Gas. He would, however, grant Transco a permanent certificate to deliver 15,000 Mcf daily to Atlanta Gas, which gas Transco has been delivering under a temporary authorization. He directed Southern to deliver the gas supply requested by Intercoastal. The applications by the Cities of Buford, Sugar Hill and Austell were denied since these are dependent upon either the authorization of the facilities sought by Transco at Docket No. CP64-270 or those involved in Southern's North Atlanta line proposal in Docket No. CP64-314, both of which were denied. In granting the application of Southern to become a co-supplier with East Tennessee to the Chattanooga market, the examiner imposed conditions requiring the filing of an agreement between Southern and Chattanooga binding Chattanooga to a third-year contract demand volume of not less than 29,000 Mcf per day and, in addition, submission of a second agreement by Chattanooga guaranteeing East Tennessee that it will maintain purchases of firm gas of not less than 31,500 Mcf at an annual load factor of 67 percent.[2]

The details of the various projects and the services proposed are set out in full in the examiner's decision and need not be restated. They are referred to herein only insofar as necessary to reflect properly the bases for our decision.

For the reasons discussed below, we find that the examiner was correct in granting Southern's applications in Docket Nos. CP64-295 and CP64-314 authorizing the proposed service to Chattanooga and denying the competing applications by Transco and East Tennessee for initial or increased service to this market area. The new service to Intercoastal and the additional gas requested by Dalton will be ordered supplied by Southern. Insofar as the proposals by Southern and Transco for additional service to Atlanta Gas in the Atlanta area are concerned, we conclude that neither application should be certificated on the record as made, but that the proceedings should be remanded to permit the parties to support their applications or amendments thereto, consistent with our findings herein.

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[1] Exceptions to the examiner's decision were filed by Austell Natural Gas System, Knoxville Utilities Board, *et al.*, Southern, Atlanta Gas, East Tennessee and Transco. Briefs opposing exceptions were filed by Intercoastal, Chattanooga, Southern, Staff, Atlanta Gas, Transco and East Tennessee. Other filings made since the date of issuance of the initial decision consist of a renewal of an appeal by East Tennessee from rulings of the examiner and answers thereto by Southern and Staff, and an amended petition by East Tennessee to reopen the proceedings, with answers thereto by Chattanooga, Southern and Transco. Southern also submitted a reply to the last-described answer of Transco.

[2] The volume of 31,500 Mcf is an approximation. The actual volume intended by the parties, both herein and in the Docket No. RP65-3 proceedings, is 31,558 Mcf per day at 14.9 psia, which is equal to 31,922 Mcf at 14.73 psia.

The Chattanooga Market

Both Southern and Transco propose to sell 29,000 Mcf of gas per day to Chattanooga and substantial additional sales within Georgia from their proposed lateral extensions. East Tennessee opposes the applications and proposes to increase its deliveries to Chattanooga by enlarging its existing facilities to add 41.5 miles of 24-inch pipeline running from a point on its 22-inch North Line near Oak Ridge, Tennessee, to a point on its 16-inch Topside-Bristol line near Jefferson City, Tennessee. The estimated cost is $4,160,000. East Tennessee has stated that the proposed facilities would increase its system's peak-day capacity by 22,141 Mcf.[3] Unlike the proposals of Southern and Transco, East Tennessee does not request authority to serve any new markets but only to serve the additional requirements of certain existing customers.

The principal purpose of the three applications is to provide increased quantities of gas to Chattanooga. Chattanooga seeks additional firm gas of 29,000 Mcf per day in the third year and both Southern and Transco propose to supply these volumes. Of this 29,000 Mcf, Chattanooga expects that its major customer, Farmers Chemical Association, Inc. (Farmers), a fertilizer manufacturer, will take 20,000 Mcf per day of firm gas. East Tennessee's primary proposal, however, is that Farmers needs only 65 percent firm gas and that the other 35 percent can be interruptible; it contends that its proposed facilities addition to increase its daily design capacity by 22,141 Mcf, of which 12,464 Mcf per day would be allocated to Chattanooga for resale to Farmers, would be fully adequate to meet the needs of this industrial customer.

Since 1956 East Tennessee has had a contract with Chattanooga under which Chattanooga must obtain its entire natural gas requirements, or at least those volumes up to 40,000 Mcf per day, from East Tennessee. However, the maximum billing demand reflected in the record, or the maximum quantity of firm gas actually taken by Chattanooga prior to the recent winter heating season[4] has been only slightly in excess of 31,500 Mcf at an annual load factor of 67 percent. As noted in the initial decision, the contract between East Tennessee and Chattanooga, and the requirements imposed thereby on Chattanooga, as well as the alleged limitations on the authority of this Commission in adjudging the instant applications under the terms of Section 7 of the Natural Gas Act, have been the subject of a collateral proceeding at Docket No. RP65-3. Final consideration of the issue presented in that docket had been delayed pending the oral argument herein. Concurrent with our issuance of this opinion and order, we are issuing our decision in that proceeding, *supra*, p. 902, reducing Chattanooga's contractual obligation to take gas from East Tennessee to 33,958 Mcf per day for the duration of the Army load at Chattanooga and 31,558 Mcf per day thereafter at 14.9 psia (see pp. 923–924, *infra*). Accordingly, we have here considered the relative merits of the various proposals as they relate to the ability of the applicants to supply the anticipated future needs of Chattanooga above that amount.

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[3] All volumes are at 14.73 psia.

[4] The experiences of the 1965–1966 winter, which are the subject of the East Tennessee petition to reopen the proceedings, as answered by Chattanooga, Southern and Transco, are considered separately. We have also excluded the exceptional circumstance of February 17, 1958, when Chattanooga's take of firm gas rose to 35,438 Mcf because of a break-down of its peak-shaving plant.

As noted above, the facilities proposed herein for construction by East Tennessee would add 22,141 Mcf per day to its peak-day capacity. Both in the hearing before the examiner and in the oral argument before the Commission, East Tennessee admitted that its existing system allowed for a maximum of only approximately 34,000 Mcf per day to Chattanooga,[5] or 6,000 Mcf short of the maximum daily demand heretofore specified in the Chattanooga-East Tennessee service agreement. It is apparent that the project here proposed by East Tennessee would not be capable of supplying 29,000 Mcf per day of firm gas to Chattanooga above the volumes historically supplied and capable of being supplied as found by us both here and in the Docket No. RP65-3, Opinion No. 494, *supra*. Although East Tennessee has proposed additional service to Chattanooga for resale to Farmers on a 65 percent firm and 35 percent interruptible basis, and has designed its present application to include only such facilities as would permit the daily delivery of the 65 percent firm gas,[6] the record establishes that the proposal for less than all firm service would not meet the needs of Farmers. Since it is in competition with two other applications which will provide the firm gas needs of Chattanooga's customers, we find that the East Tennessee application is not best suited to meet the additional gas requirements in the Chattanooga market. For this reason, the application will be denied.

On January 27, 1966, East Tennessee filed a renewal of appeal from rulings of the examiner rejecting certain proffered evidence. The evidence in question consists of a large number of exhibits and testimony intended to show: (1) that East Tennessee has committed itself to make a voluntary rate reduction of 2-cents per Mcf in its demand-commodity rates and 1-cent per Mcf in its single part rates in its Zones 1 and 2 if it is certificated to continue to serve the entire natural gas requirements of Chattanooga; (2) the extent of the benefit which would thereby be occasioned on East Tennessee's customers; (3) that the certification of a second supplier to Chattanooga will have an adverse impact on East Tennessee and its customers; (4) answering evidence to the effect that Farmers can use part firm-part interruptible service rather than needing all firm; and (5) evidence to show that East Tennessee could revise its proposal to supply economically all firm gas to Chattanooga for Farmers.

We have decided that the evidence offered by East Tennessee is relevant to the determination of the issues in this proceeding and should be considered by us. We have done so and find that the examiner's recommended denial of the East Tennessee application remains unaffected. Even if, as stated by counsel for East Tennessee, the proposed rate reduction is to be in addition to the recent reductions ordered by us in Opinion No. 488,[7] the resultant rate is still considerably higher than the rate to be charged Chattanooga by Southern under its OCD-3 rate schedule. We do not minimize the rate reduction which would enure to the benefit of East Tennessee's other customers. However, this factor alone cannot justify the grant of an application which is clearly inferior to other competitive proposals. Insofar as the impact study is concerned, the assumption is that Chattanooga will reduce its purchases to an annual 48 percent load factor. The evidence shows, however, that Chattanooga has, and at the time of East Tennessee's presentation had, been on record as committing itself to continue firm purchases for the future at an annual load factor of no less than 67 percent, as well as to maintain its billing demand of approximately 31,500 Mcf.

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[5] Transcript, vol. 23, pp. 2457–2459. The estimate of the deficiency stated by East Tennessee at the oral argument (Transcript, vol. 37, p. 3847) was considerably higher, being in the range of "approximately 10 to 12 thousand Mcf per day." The 34,000 maximum capability at Chattanooga from the existing system is confirmed in Exhibit No. 7 to the application in Docket No. CP64–21, wherein we certificated East Tennessee's Virginia Extension and of which we here take administrative notice, showing maximum possible deliveries of 33,817 Mcf per day to Chattanooga.

[6] Exhibit 112, Sch. 11.

[7] *Knoxville Utilities Board, et al.* v. *East Tennessee Natural Gas Co.*, issued April 19, 1966, 35 FPC 534.

Respecting Item (4), the record fully supports Farmers' need for all firm gas. East Tennessee's answering evidence to the contrary, while relevant, does not convince us that East Tennessee's application, which involves part firm and part interruptible service to Farmers, is adequate and should be granted in preference to Southern's application.

The answering evidence offered by East Tennessee which was intended to show that East Tennessee could, if necessary, revamp its proposal so as to supply all firm gas to Chattanooga for resale to Farmers and the evidence offered to rebut the revenue deficiency showing was for a project not contemplated by the East Tennessee application as filed. The evidence in the record, and the testimony of East Tennessee's witnesses and counsel conclusively shows that long before its own application was filed East Tennessee was aware that Southern was proposing all firm service to Farmers and that Farmers desired this service. Contrary to its allegation East Tennessee could not have been surprised, when, as the hearings began, Farmers affirmed its need for firm gas. East Tennessee had ample opportunity, if it so desired, to submit an amendment to its application to provide this service. Apart from the untimeliness of this evidence and the fact that it was offered "as a matter of demonstration only" we have nevertheless considered it but believe it does not establish that East Tennessee could supply the present needs of Chattanooga in a manner superior to that now before us in the Southern application.

Following the filing of the exceptions to the initial decision and the briefs in opposition thereto, East Tennessee requested that the record be reopened for the purpose of taking into account additional evidence regarding the recent increased takes of firm gas by Chattanooga beginning in January 1966 and continuing through the months of February and March 1966. This evidence is similar to material filed by East Tennessee in the Docket No. RP65-3 proceeding and shows that Chattanooga's takes during January increased to a daily high of 43,782 Mcf and held constant in a range of 39,000 to 43,000 Mcf per day through the first week of February. East Tennessee, in the oral argument, noted that Chattanooga's takes have remained substantially above 31,000 Mcf on many days since that time. From this East Tennessee argues that Chattanooga's demand has already increased and that there is no longer any validity to Chattanooga's claim that it will be unable to grow if a secondary source of natural gas is not certificated.

Answers in opposition to East Tennessee's petition were filed by Chattanooga and Southern. Neither objects to the receipt into evidence of the material offered by East Tennessee. They disagree vigorously, however, with the inferences and the conclusion drawn therefrom by East Tennessee. Both Chattanooga and Southern argue that the increased takes by Chattanooga are fully explainable. They note that the period referred to by East Tennessee was at a time when a large area of the eastern seaboard was experiencing an extended and almost unprecedented cold spell and that Chattanooga was faced very early in the period with an acute shortage of propane.[8] Also, because of the wide geographical area covered by the cold spell, Chattanooga was unable to procure or receive deliveries of additional propane supplies. Since it was impossible to augment its depleted supply of propane, Chattanooga alleges that it had no alternative but to permit its demand on East Tennessee to rise to the record figures.

Chattanooga also observes that East Tennessee encountered significant difficulties during this same period in obtaining sufficient gas to meet the unprecedented demand and that it was able to effect the increased deliveries, in part, only by obtaining 7,000 Mcf per day of emergency gas from Texas Eastern Transmission Corporation and installing temporary compressor facilities.

In the absence of any objection to the receipt of the temperature and daily delivery information contained in East Tennessee's petition, we will permit this evidence to come into the record. However, reviewing this material in the light most favorable to East Tennessee, we cannot find thereby that the increased taking of firm gas by Chattanooga was anything other than an emergency measure to meet an emergency situation. When adjusted for the reduced operations by Chattanooga of its peak-shaving plant, its purchases from East Tennessee are not shown to have been higher than the quantities reflected in the market data previously of record.

East Tennessee observes in its petition that the foregoing does not serve to explain why Chattanooga continued to purchase volumes far in excess of 31,500 Mcf per day throughout the latter days in February 1966 when temperatures had become warmer. It is apparent, however, that once Chattanooga had recorded a new billing demand of over 40,000 Mcf per day, this new figure became the applicable billing demand for the succeeding 12-month period and further takes up to such maximum do not result in the incurrence of any additional demand charges. Thus, until the instant proceedings and those at Docket No. RP65-3 were resolved, it has been to Chattanooga's benefit to restrict the operation of its propane plant and to take as much firm gas as needed from East Tennessee up to the newly established maximum.

By letters dated October 13 and November 12, 1965, the Department of the Army advised the Commission that a portion of the Volunteer Army Ammunition Plant at Chattanooga was to be reactivated for the production of ammunition. Although the letters indicated that a supply of firm gas would be needed, there was no statement as to the amount of gas which would be required. At the May 3 oral argument, the Army's counsel stated that the plant had been ordered to full production the previous week, that activation is expected by August and that maximum output will be achieved by January 1, 1967. At that time no precise figure for the amount of gas needed could be given. Counsel for the Army stated that a firm figure would be secured as soon as possible and that the parties would be advised thereof. By a letter dated May 6, 1966, copies of which were furnished to all parties, the Army advised that the reactivation of the ammunition plant would necessitate a net increase of 2,400 Mcf per day in the Chattanooga market requirements over those set out in the record in these proceedings.

The gas volumes now required by the Army were unknown at the time the projected market estimates and market requirements for the Chattanooga area were prepared by the applicants in this case. All parties agree, however, that this gas must be supplied to the Army, or its contractor, when it is needed by them and that no delay can be occasioned. Counsel stated that the Army had been assured by Chattanooga and East Tennessee that the gas would be made available by them. In our opinion, the gas needed by the Army should be supplied by Chattanooga from volumes sold to it by East Tennessee since in all probability Southern's facilities as herein certificated will not have been extended to Chattanooga by the date forecast for the initiation of this service. Moreover, it is questionable whether Southern will have adequate excess capacity deliverable at Chattanooga in the third year of operation, beyond the volumes here certificated, sufficient to continue the supply of the Army's requirements and the increasing quantities of firm gas forecast to meet the needs of Farmers. Accordingly, Chattanooga's reduced contract demand with East Tennessee will include the additional 2,400 Mcf of gas per day needed by the Army.[9]

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[8] Whereas Chattanooga might otherwise have relied on the full 13,500 Mcf per day capacity of its propane-air equipment, its actual peak shaving averaged less than 3,000 Mcf per day.

The portion of the Transco application dealing with the service to Chattanooga must be denied because Transco's Zone 1 rate does not apply to its proposed sales to Intercoastal, Dalton, Atlanta Gas at Ringgold and Chattanooga, as fully explained by the examiner whose findings and conclusions on this issue we adopt. Under Transco's applicable Zone 2 rates, we conclude that Southern's proposal is superior to that of Transco.

The need for the additional quantities of gas proposed herein for the Chattanooga market has been fully established. Approval of Southern's application for the Chattanooga line in preference to that of East Tennessee is required, we believe, by the present and future public convenience and necessity. Southern's lower rates will permit Chattanooga to expand its sales and enable it to compete more effectively with alternative energy sources, particularly low-priced TVA power. In this connection, Chattanooga has indicated that a lowering of its retail rates reasonably may be expected to result from certification of Southern's proposal. Only by certification of Southern will Chattanooga be in a position to provide the service its customers require, specifically the needs of Farmers for firm gas. In addition, certification of Southern will put East Tennessee in a position promptly to meet the needs of the additional requirements of the Army at Chattanooga without having to curtail the requirements of its existing customers. We further find that neither East Tennessee nor its other customers will be disadvantaged by our certification of Southern.

Southern's line as here certificated will consist of the new 1,100 horsepower Bell Mills compressor station, 49.2 miles of 14-inch loop line to Rome, Georgia, and approximately 50 miles of 12¾-inch pipeline from Rome to Chattanooga. While the examiner found that the deliveries to Chattanooga would have to be made outside the boundaries of the State of Tennessee, we agree with Southern's statement in its exceptions that there is nothing in its tariff which prohibits it from crossing the state line. Accordingly, this conclusion of the examiner will not be adopted.

As part of its proposal, Chattanooga made a commitment to continue to purchase from East Tennessee a contract demand of 31,922 Mcf per day at 67 percent load factor, which represents its historic purchases. The purpose of this offer is to protect East Tennessee's other customers from the results of a drastic reduction in the volume of East Tennessee's sales to Chattanooga. In view of this commitment, any condition to this effect is unnecessary, as we have previously held.[10] While Knoxville, *et al.* did not object to certification of a second supplier for Chattanooga, they contend that Chattanooga should be required to maintain purchases at the 1964 level of its firm and interruptible takes from East Tennessee, thereby guaranteeing a load factor of 94 percent. However, 27 percent of this load is the interruptible volumes formerly purchased for the service to Farmers, which will now be supplied by Southern, and as to which the only facility constructed by East Tennessee was a meter station at a total cost of $20,000. Moreover, as noted by the examiner, no authorization was issued by us respecting the interruptible sales made by East Tennessee to Chattanooga and there is no contract in the Commission's files under which either East Tennessee is obligated to make these sales or Chattanooga obligated to purchase such interruptible gas. In our opinion, there is no justification for requiring Chattanooga to maintain its contract demand purchases above the level which existed at the time the basic record was made, particularly since the record makes clear that East Tennessee can substantially replace its interruptible sales to Chattanooga with sales to other customers.

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[9] We note in passing that this action is consistent with East Tennessee's position in its second amendment to its petition to reopen filed May 25, 1966.

The other facilities requested by Southern in Docket Nos. CP64–259 and CP64–314 will be certificated with the exclusions made by the examiner. Leaving aside the Atlanta market, the remaining market requirements were either accepted or fully supported and the facilities and services to be supplied are reasonable and necessary. The service proposed to be rendered to Intercoastal and the additional allocations for Dalton and for Atlanta Gas at Ringgold will be authorized for the reasons fully expressed by the examiner. As noted in the initial decision, Intercoastal has stated its willingness to purchase gas from Southern if Southern is certificated as the second supplier to Chattanooga. Southern has stated its willingness to accept a condition requiring such service. Although Dalton originally had requested the Commission to order Southern to purchase the existing 42-mile Rome-Dalton line, the order was denied by the examiner and Dalton's counsel, at the oral argument, stated that Dalton was no longer pursuing the request.

No exception was filed to the examiner's denial of the petition by Tennessee Gas Transmission Company[11] for amendment of the order in Docket No. CP64–165, and the denial will be confirmed. All other exceptions and petitions for review and reopening heretofore filed respecting these issues are denied, except as herein granted. We turn our attention now to the consideration of the proposals for additional service to the Atlanta market.

The Atlanta Market

Atlanta Gas and Transco executed a precedent agreement whereby Transco would supply an additional 40,000 Mcf of gas per day[12] in increments with deliveries to be made from Transco's proposed Monroe-Chattanooga extension at Ball Ground, Cumming and Suwanee. Atlanta Gas also entered into a precedent agreement with Southern for the purchase of 20,000 Mcf of gas per day, also in increments, from Southern's proposed North Atlanta lateral, provided that Transco did not receive authorization in Docket No. CP64–270, or otherwise was unable to perform.

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[10] *East Tennessee Natural Gas Co.*, Docket No. CP64–21, Opinion No. 435, issued July 17, 1964, 32 FPC 158.

[11] Now Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[12] The 40,000 Mcf per day includes the temporarily authorized deliveries of 15,000 Mcf daily.

For the reasons hereafter stated, we conclude that additional service to Atlanta of the type proposed by Transco may be warranted. However, since Atlanta Gas failed to make a sufficient showing regarding the extent of the additional needs of the Atlanta area, and since Transco failed to adequately develop its proposal to serve Atlanta, this aspect of the case must be remanded. Nevertheless, since certain of the issues have been fully tried and briefed, it is appropriate to resolve them at this time and so avoid duplicative effort at the remanded proceeding.

We agree with the examiner's observation that the market evidence submitted by Atlanta Gas has a tendency to obfuscate rather than to delineate its actual requirements. There are three successive sets of exhibits on this subject. Some list contract demand volumes of Atlanta Gas by calendar years, while others list peak day purchases for a 12-month period beginning September 1. It is difficult, at best, to compare the data in these exhibits as among themselves, and to Atlanta's purchases from Transco. While the evidence does seem to indicate that increasing volumes of gas are required in the metropolitan Atlanta area, it is not possible to determine from the record with any assurance just what these requirements are. It was never actually explained, for example, why Atlanta Gas required 40,000 Mcf per day if Transco's application were granted but only 20,000 Mcf per day if Southern's were authorized.

The examiner did find that Atlanta Gas had established a need for an additional supply of 15,000 Mcf of gas per day. No party has taken exception to this finding and we will adopt it. Transco is presently supplying these volumes under temporary authority issued October 16, 1964. Since the issue of service to Atlanta is to be remanded, we will not permanently authorize these volumes, at least at this time. At the remanded proceeding we anticipate that the parties will demonstrate with reasonable clarity a base period from which estimated requirements should be measured and a listing of contract demand volumes applicable to Atlanta Gas during the base period, showing total volumes and those applicable to the Atlanta market only. Data in similar form should be included for project requirements and purchases.

From the standpoint of rate level, the availability of storage and peak shaving service, and general delivery area, Transco's proposal to serve what appear to be the additional requirements of Atlanta Gas is superior to that of Southern. In addition, Transco's proposal would permit Atlanta Gas to extend service to seven cities in the area without natural gas. Service to those communities has been found to be in the public interest by the Georgia Public Utilities Commission. While Southern's proposal also involves service to seven new communities, this does not persuade us that Southern's application is superior.

The examiner held that Transco's historic policy of not constructing lateral extensions necessitated denial of its proposals in this proceeding. It is conceded that Transco historically has followed a policy of not constructing such extensions. However, this past practice does not preclude Transco from changing its policy providing its new policy is a reasonable one which it is willing and able to follow on a consistent and non-discriminatory basis.[13]

Surely, it would not be sensible to bind a pipeline to past practices which may be unreasonable or uneconomic in today's increasingly competitive situation. And, if a company is ever to be able to change its policy, such change reasonably should be allowed in a certificate proceeding.

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[13] Transco has already filed to change its lateral line policy in Docket No. CP66-150.

The record in this case discloses no significant adverse impact on Southern from certification of Transco. Despite specific requests, Southern made no showing on the record that idling of its facilities would result. Moreover, Southern admitted that its net revenues from Atlanta Gas would steadily increase. Southern complains that it is improper to consider its overall revenues from Atlanta Gas, which relates to purchases for areas other than from the Atlanta area. However, Atlanta Gas is one customer which pays one bill to Southern. Under the somewhat unique arrangement between the parties, Atlanta Gas' bill is computed on the basis of its contract demand at each delivery point. However, Atlanta Gas has what seems to us to be the necessary contractual right to shift demands among its delivery points when such changes do not require additional construction by Southern, or result in a net decrease. For some years, it is clear Atlanta Gas has exercised this right, which Southern does not contest, to shift its contract demand from delivery points in the Atlanta area to those serving other Georgia communities.

Transco's application herein requests authority to construct 22.7 miles of 26-inch loop along its mainline system, 35.09 miles of 30-inch loop along its gathering system in Southern Louisiana and a 126-mile lateral extension from its mainline at Monroe, Georgia to the Georgia-Tennessee border near Graysville, Georgia, as well as miscellaneous meter and regulator facilities. With these facilities, Transco proposed to deliver and sell a total of 81,935 Mcf per day, principally to Chattanooga and Atlanta from its proposed lateral, which has a capacity of 128,483 Mcf per day without the construction of any compression or looping along the lateral. Despite Staff's timely request for a showing on how Transco would serve Atlanta if not certificated to serve Chattanooga, Transco refused to respond until the hearing was concluded. For the first time in its reply brief to the examiner, Transco included appendices taken from the data in the record showing the economic feasibility of terminating its proposed lateral at Ball Ground and serving only Atlanta Gas. Adjusting these appendices, which were also included in Transco's exceptions, to reflect annual sales of 8,800,000 Mcf, as forecast by Atlanta Gas, an incremental rate of return of about 5½ percent results. This data is conservatively predicated on incremental facilities whose capacity greatly exceeds the needs of Atlanta Gas. Nevertheless, there was no opportunity to test these exhibits at the hearing, and we are unable to determine, on the basis of this record, just what facilities would or should be constructed if Transco were certificated.

For these reasons, the application of Transco and Southern to provide additional service to Atlanta Gas for the Atlanta area will not be granted, and the issue of additional service to Atlanta will be remanded for further proceedings consistent with this opinion.

The Commission further finds:

(1) Southern, East Tennessee, Transco and Tennessee Gas Transmission Company (Tennessee Gas Pipeline Company, a Division of Tenneco Inc.) are engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities which Southern proposes to construct and operate, as described in its applications in Docket Nos. CP64–295 and CP64–314, will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction

and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Southern is able and willing properly to do the acts, to make the sales and to perform the services proposed by it in Docket Nos. CP64-259 and CP64-314, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The facilities referred to in paragraph (2) above are adequate and appropriate to render the services which Southern is hereinafter authorized to provide.

(5) The construction and operation of the facilities and the new sales of natural gas proposed by Southern in the aforesaid applications and as herein approved are required by the public convenience and necessity and certificates therefor shall be issued as hereinafter ordered and conditioned. Those portions of the application in Docket No. CP64-314 wherein Southern seeks authorization for the construction of the North Atlanta line and the proposed service to be rendered therefrom, and the related portion of the proposed Macon to Atlanta loop, should not here be granted.

(6) The public convenience and necessity require (a) that the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificates hereinafter issued to Southern and to the exercise of the rights granted thereunder, and (b) that the time within which the facilities authorized by this order shall be constructed and placed in actual operation shall be fixed at six months from the date of issuance of the order herein.

(7) The authorization herein granted to Southern and the conditions imposed thereon are necessary and required by the public convenience and necessity.

(8) A proposal of the type advanced by Transco for additional gas sales to Atlanta Gas in the Atlanta market area is superior to the North Atlanta lateral proposal of Southern.

(9) Transco's tariff, as now filed, and its historic lateral line policy, or absence thereof, does not bar the certification of a proposal of the type herein considered for service to Atlanta Gas.

(10) The record does not establish that there would be any significant impact on Southern from the certification of the proposed sales by Transco to Atlanta Gas.

(11) While estimates based on data presently of record indicate that Transco's proposal for service to Atlanta Gas in the Atlanta market may be economically feasible, the record does not establish with the necessary specificity the facilities which would be necessary and appropriate to provide the service, or the economic justification thereof, and these aspects of the proceeding must therefore be remanded. Accordingly, Transco's application in Docket No. CP64-270 should not here be granted.

(12) The application of East Tennessee in Docket No. CP65-66 should be denied. The 2,400 Mcf per day firm natural gas requirements of the Volunteer Army Ammunition Plant, as set out in the letter from the Department of the Army to the Commission dated May 6, 1966, should be supplied by Chattanooga from gas purchased from East Tennessee.

(13) The petition of Tennessee Gas Transmission Company (Tennessee Gas Pipeline Company, a Division of Tenneco Inc.) in Docket No. CP64-165 should be denied.

(14) In view of the remand of the application by Transco in Docket No. CP64–270. and the North Atlanta line proposed by Southern in Docket No. CP64–314. the applications of the City of Buford, Docket Nos. CP65–11 and CP65–20, City of Sugar Hill, Docket Nos. CP65–10 and CP65–19, and City of Austell, Docket No. CP65–74, for orders directing service under Section 7(a) of the Natural Gas Act should be deferred.

(15) Except as herein granted, all exceptions to the initial decision and motions to reopen the proceedings should be denied.

(16) The examiner's decision, to the extent not inconsistent herewith, should be adopted as part of this opinion and order.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all the pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing Southern Natural Gas Company to construct and operate the facilities proposed in Docket Nos. CP64–259 and CP64–314, except as such authorization has been heretofore limited in finding paragraph (5), all as more fully set out in Southern's applications and in the record in these proceedings.

(B) The certificate of public convenience and necessity issued by paragraph (A) above is subject to the following terms and conditions:

(1) Within 30 days of the date of issuance of this opinion and order Southern shall file an executed service agreement with Chattanooga, subject to the approval of the Commission, wherein Chattanooga shall agree to a third-year contract demand for the purchase of firm gas under Southern's rate schedule OCD–3 of not less than 29,000 Mcf per day;

(2) Within 30 days from the date of issuance of this opinion and order Chattanooga shall submit an agreement signed by Farmers Chemical Association providing for the purchase by Farmers of a firm peak day volume of at least 20,000 Mcf and an annual volume of approximately 6,935,000 Mcf in the second year;

(3) Southern shall construct and operate such transmission facilities as shall be necessary to supply Intercoastal Gas Corporation with a firm third-year peak volume of 2,613 Mcf, the deliveries of which are hereby authorized;

(4) Southern shall deliver to the Water, Light and Sinking Fund Commission of the City of Dalton, Georgia a total firm third-year peak volume of 20,000 Mcf;

(5) Southern shall deliver to Atlanta Gas Light Company at the latter's Ringgold delivery point a firm third-year peak volume of 4,770 Mcf;

(6) The certificate herein issued to Southern shall be accepted in writing and under oath within 30 days of the date of issuance of this order. The general terms and conditions set forth in paragraphs (a), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of such certificate and to the exercise of the rights granted thereunder;

(7) The facilities authorized herein shall be constructed and placed in operation within six months from the date of issuance of this order.

(C) Transco's request for authorization to provide service to Chattanooga is denied; in all other respects decision on the application filed in Docket No. CP64–270 is deferred.

(D) The proceedings relative to the proposals for the delivery of additional gas to Atlanta Gas for use in the Atlanta market area are remanded to afford the parties an opportunity to perfect their applications, or amendments thereto, consistent with our findings herein; the applications of the City of Buford, Docket Nos. CP65–11 and CP65–20, City of Sugar Hill, Docket Nos. CP65–10 and CP65–19, and City of Austell, Docket No. CP65–74 are also deferred.

(E) Pursuant to the authority conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 7 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a supplemental hearing shall be held in these proceedings consistent with our opinion and order herein, as prescribed by the following:

(1) Amendments to existing applications, and new applications to be consolidated in the remanded proceeding, must be filed with the Federal Power Commission on or before August 1, 1966; and notices or petitions to intervene in such applications may be filed with the Commission on or before August 22, 1966.

(2) Presiding Examiner Ames W. Williams, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 F.R. 4276, etc.) shall establish the procedures to be followed in the remanded proceeding, including the setting of dates for a prehearing conference or hearing as early as may be appropriate after August 22, 1966.

(F) The application of East Tennessee Natural Gas Company in Docket No. CP65–66 is denied.

(G) The petition of Tennessee Gas Transmission Company (Tennessee Gas Pipeline Company, a Division of Tenneco Inc.) in Docket No. CP64–165 is denied.

(H) The certificates herein issued are not transferable and shall be effective only so long as the respective applicant continues the acts and operations hereby authorized in accordance with the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) Except as herein granted, the exceptions to the examiner's decision and motions to reopen the proceedings are denied.

(J) The examiner's decision, to the extent not inconsistent, is hereby adopted as part of this Opinion and order.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued December 21, 1965)

WILLIAMS, *Presiding Examiner:*

The instant consolidated proceeding pursuant to Commission order of October 6, 1964, involves competitive applications filed under Section 7(c) of the Natural Gas Act (Act) for certificates of public convenience and necessity by Transcontinental Gas Pipe Line Corporation (Transco), Southern Natural Gas Company (Southern) and East Tennessee Natural Gas Company (East Tennessee); a petition under Section 16 of the Act by Tennessee Gas Transmission Company (Tennessee Gas) for the modification of the certificate of public convenience and necessity previously issued in Docket No. CP64–165; applications under Section 7(a) of the Act by the Cities of Buford and Sugar Hill, Georgia (Buford) (Sugar Hill), for orders requiring either Transco or Southern to supply new delivery points and a similar application by the

City of Austell, Georgia (Austell), requiring Southern to provide a new delivery point. Southern's application in Docket No. CP64–259 was filed on April 29, 1964, and seeks authorization to construct and operate additional compressor units at three existing north line compressor stations costing approximately $492,000 for the purpose of increasing system delivery capacity by 16,000 Mcf per day, an amount the applicant deems necessary to meet unexpected increases in the firm requirements of present customers during the 1964–1965 heating season.

Southern's application in Docket No. CP64–314, embracing construction and facilities costing some $28,377,920*, was filed on June 30, 1964, for the purpose of increasing the system capacity by 180,000 Mcf per day. The expansion is designed to meet increased requirements of the applicant's current customers at existing delivery points; the requirements of present and prospective customers at new delivery points to be located on the projected North Atlanta and Chattanooga lines and to transport larger volumes of gas through the applicant's South Louisiana Supply System.

Transco's application in Docket No. CP64–270 was filed on May 8, 1964, supplemented on June 29, 1964, and amended on September 18, 1964. In the application, as supplemented, Transco requested authorization to construct and operate, at an estimated cost of $20,100,000, 103 miles of 30 and 36-inch pipeline loops in the States of Louisiana, Mississippi and Alabama for the purpose of increasing its main line capacity by 80,149 Mcf per day and a new 60-mile 20-inch pipeline extending about halfway from its main line near Monroe, Georgia, to Chattanooga, Tennessee.

In its amended application, Transco seeks authorization to construct and operate 57 miles of 30 and 36-inch pipeline loops in the States of Louisiana, Mississippi and Alabama to increase main line capacity by 47,045 Mcf per day and a new 126-mile 20 and 16-inch pipeline extending from the main line near Monroe, Georgia, to Chattanooga, Tennessee. The estimated cost of construction and facilities in the amended application is stated as $17,800,000 and the expansion will serve market requirements of 81,935 Mcf per day.

The amended application was filed concurrently with the withdrawal of an application filed May 8, 1964, by the Georgia-Tennessee Gas Corporation (Georgia-Tennessee) in Docket No. CP64–272. In such application Georgia-Tennessee proposed to construct and operate a 72-mile pipeline extending from the terminus of Transco's originally proposed 60-mile extension at Sharp Top, Georgia, to Chattanooga, Tennessee, for the purpose of directly supplying Farmers Chemical Association Inc. (Farmers Chemical), with gas to be obtained from Transco. Farmers Chemical, a fertilizer manufacturer, is presently Chattanooga Gas Company's (Chattanooga Gas) largest customer.

East Tennessee's application in Docket No. CP65–66 filed on September 10, 1964, seeks authorization to construct at a cost of $4,160,000 and operate a 24-inch pipeline loop, approximately 41.5 miles in length, within the State of Tennessee which will increase its main line delivery capacity by 22,141 Mcf.

The Section 7(a) applications of Buford and Sugar Hill filed on July 9 and 20, 1964, against Transco and Southern, respectively, seek a new delivery point from either supplier. Austell's application was filed on September 16, 1964, and requests that Southern be required to provide a new delivery point from its proposed North Atlanta line.

Southern filed an application on September 9, 1964, for a temporary certificate in Docket No. CP64–259 which was granted by the Commission on

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*Hearing Exhibit 50 shows the estimated cost of facilities to be $27,621,254.

October 2, 1964, subject to certain conditions subsequent. On September 25, 1964, Transco, in Docket No. CP64–270, also filed an application for a temporary certificate requesting authorization to supply Atlanta Gas Light Company (Atlanta Gas) with an additional firm supply of 15,000 Mcf per day of gas at existing delivery points commencing December 1, 1964. A temporary certificate was issued on October 16, 1964. On February 23, 1965, Southern filed an application for a temporary certificate in Docket No. CP64–314 requesting authorization to construct and operate certain compressor units. Permission to construct, but not operate, such units was granted on April 13, 1965.

Transco made application for a temporary certificate on May 5, 1965, in Docket No. CP64–270 to construct and operate certain facilities including a 16-inch lateral to Tryon, North Carolina, without prejudice to the rights of competing applicants in this proceeding, and to renew the temporary authority to supply Atlanta Gas with CD–1 sales of 15,000 Mcf per day previously granted by the Commission on December 1, 1964. On June 21, 1965, Transco filed a supplement to such application wherein it requested authorization to substitute CD–3 service of 55,000 Mcf per day for Consolidated Edison Company of New York, Inc. (Con Edison), in lieu of the presently authorized GSS service of 55,000 Mcf per day.

The Commission on June 25, 1965, approved the continuation of the temporary authorization of sales to Atlanta Gas but denied the construction of the Tryon lateral and the substitution of CD–3 service to Con Edison.

On July 9, 1965, Southern filed its second application for a temporary certificate, requesting authority to loop its existing Rome branch line. On August 30, 1965, 34 FPC 655, the Commission authorized Southern to construct but not operate the requested loop line.

On October 19, 1965, 34 FPC 1172, The Commission authorized Southern to operate the facilities, construction of which had already been approved in the before-mentioned first and second temporary certificate applications.

The Commission has permitted at various times the intervention of the following parties in this proceeding: Southern, Chattanooga Gas, East Tennessee, Carolina Pipeline Company, Knoxville Utilities Board, *et al.* (East Tennessee Interveners), Buford, Sugar Hill, South Carolina Natural Gas Company, Alabama Gas Corporation (Alabama Gas), Mississippi Valley Gas Company (Mississippi Valley), Intercoastal Gas Corporation (Intercoastal), Atlanta Gas, Long Island Lighting Company, Con Edison, Savannah Gas Company, Austell, Brooklyn Union Gas Company, Public Service Electric and Gas Company, Transco, The Water, Light and Sinking Fund Commission of the City of Dalton, Georgia (Dalton), Philadelphia Gas Works Division of The United Gas Improvement Company, and the City of Chattanooga, Tennessee. The Public Utilities Commission's of the States of Pennsylvania, Tennessee and North Carolina filed notices of intervention.

Prior to the initial hearing the parties stipulated that the proposals of Transco, Southern and East Tennessee can be financed in accordance with the manner described by the respective witnesses of the applicants; that the estimated costs of the facilities proposed by such applicants appear to be reasonable and that estimated recoverable reserves and the deliverability therefrom by each such applicant are not disputed insofar as the geological data utilized for the derivation of the reserves and the deliverability estimates are concerned.

Formal hearings began on November 9, 1964, and were concluded on April 13, 1965. The record consists of 3,737 pages of transcript, 212 exhibits and 36 items by reference.

The Markets Involved

There are two main competitive market areas concerned: namely, Chattanooga and Atlanta. The first, involving prospective sales to Chattanooga Gas in the range of 29,000 Mcf per day is the primary objective of the three competing applicants. Two of the applicants, Southern and Transco, seek to gain access to this prize and the third, East Tennessee, presently in possession, desires to maintain the *status quo*. The second market area involves sales to Atlanta Gas, Dalton and Intercoastal. Here, the field of applicants is reduced to two: Transco and Southern.

With respect to the Chattanooga market, East Tennessee has enjoyed the advantage of a contract with Chattanooga that requires the latter to purchase all its natural gas requirements from the former up to 40,000 Mcf per day. Without going into the details of the contract, it should be noted that a collateral proceeding, Docket No. RP65-3, was devoted entirely to the question of whether or not the provisions of such contract between East Tennessee and Chattanooga are unjust, unreasonable, unduly discriminatory or prejudicial. The issue was subsequently resolved in the affirmative by Presiding Examiner Arthur H. Fribourg in an initial decision issued on April 20, 1965, *supra*, p. 909.

The undersigned Examiner ruled early in this proceeding that he would be bound by the relative findings enunciated in Docket No. RP65-3 and the instant decision accordingly assumes that the modification of the total requirements provision in the contract between East Tennessee and Chattanooga Gas so as to permit the certification of an additional source of gas supply to the latter is in the public interest. Such assumption enables this Examiner to consider the three competing applications to serve the Chattanooga area upon the basis of their respective merits and to discard the alternative proposals made by Southern and Transco which were predicated upon the maintenance of the exclusive dealing feature of the contract.

The Chattanooga Market

Chattanooga Gas, a distributor of natural gas in the Chattanooga, Tennessee area, has been receiving its sole supply of natural gas from East Tennessee since 1950. During the first decade of service Chattanooga Gas' cost of gas, computed at a 70 percent load factor, has increased from 32.1 cents to 50.4 cents per Mcf while, since 1954, its number of customers has inversely but not necessarily in proportion, declined. This unfortunate state of circumstances was substantially ameliorated early in 1963 when operations commenced by the Farmers Chemical fertilizer plant at Tyner, Tennessee. Interruptible service was supplied to this new purchaser through a 10-inch pipeline built by Chattanooga from a point on East Tennessee's 12-inch line and during the fiscal years ending on August 31, 1963 and 1964, Chattanooga sold to Farmers Chemical 1,801,000 Mcf and 2,837,000 Mcf of interruptible gas, respectively.

Frequent interruptions by East Tennessee during the first winter, however, caused Farmers Chemical to become dissatisfied with the interruptible service and to seek a means of obtaining a firm natural gas supply at a more advantageous rate than could be negotiated by Chattanooga from its supplier.

At this time, Chattanooga's contract with East Tennessee entitled it to take up to 40,000 Mcf per day but the billing demand was established at 31,500 Mcf and at a load factor of approximately 67 percent.[1]

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[1] A billing demand of 31,897 Mcf per day was established on December 19, 1963.

Chattanooga being unable to procure firm service from East Tennessee at an attractive rate for the benefit of Farmers Chemical, induced the latter in December 1963 to sign a long-term contract with Georgia-Tennessee. In an effort to forestall the impending loss of this important customer, Chattanooga, in turn, approached Southern as a possible second source of supply.

Southern reciprocated by filing an application in Docket No. CP64–314 offering to extend a pipeline to connect with Chattanooga's facilities and to deliver up to 29,000 Mcf. Because Southern's rate was lower than that proposed by Georgia-Tennessee, the latter withdrew its application and, as previously stated, Transco supplemented its application in Docket No. CP64–270, offering to extend its proposed line all the way to Chattanooga and to supply firm service at its CD–1 Rate Schedule.

Chattanooga's market presentation, relied upon by both Southern and Transco, contemplates continuing purchases from East Tennessee in the amount of 31,500 Mcf per day at a load factor of 67 percent and purchases from Southern (the second source of supply preferred by Chattanooga) in the amount of 23,000 Mcf in 1966, 28,000 Mcf in 1967 and 29,000 Mcf in 1968. Of the 1968 volume, Chattanooga expects that 20,000 Mcf will be taken by Farmers Chemical since the latter has indicated that under favorable rate conditions it will execute an agreement for this amount of firm service.

Mr. Glenn D. Rucker, testifying on behalf of Farmers Chemical, affirmatively stated that while it is, of course, possible to operate his plant with interruptible service, a firm supply of natural gas is necessary for optimum production and future plant expansion. Therefore, such service is earnestly desired.

While it is obvious that Chattanooga's desire for a second and cheaper source of supply is principally motivated by anxiety to keep Farmers Chemical as a customer, it was demonstrated that the high cost of East Tennessee gas and the lower cost of electricity has adversely affected Chattanooga's growth with respect to the attachment of industrial and residential customers.

Chattanooga also maintains that under present circumstances it cannot deliver more gas in the part of its distribution system where it is most needed because the maximum pressure at which it can operate its propane plant has been reached. In order to overcome this difficulty, Chattanooga would be required to spend more money in constructing facilities to increase its take from East Tennessee than it would to attach Southern as a second supplier.

In opposing Chattanooga's quest for a second source of supply, East Tennessee has adopted the anomalous attitude that Farmers Chemical does not require all firm service or volumes in the range of 20,000 Mcf in order to profitably manufacture nitrogenous fertilizer. In support of this gratuitous premise, East Tennessee offered the testimony of Mr. Joseph T. Moody, an employee of the Tenneco Chemical Company, a Tennessee Gas subsidiary, who was without personal knowledge of the operations or management objectives of the Farmers Chemical plant.

The East Tennessee Application

East Tennessee's position-in-main in this proceeding is (1) that the public convenience and necessity requires that it remain the sole supplier of natural gas to Chattanooga and (2) that the requirements of Farmers Chemical can and should be met on the basis of 65 percent firm deliveries and 35 percent interruptible.

Upon the assumption that this position will find favor, East Tennessee proposes to construct and operate some 41 miles of 24-inch pipeline loop and appurtenant facilities in the State of Tennessee so as to increase its main line daily design capacity by approximately 22,141 Mcf. The location of the proposed facilities will be from a point on East Tennessee's 22-inch north line near Oak Ridge to a point near Jefferson City, Tennessee, on its 16-inch Topside to Bristol line. East Tennessee proposes to utilize the additional capacity, costing $4,160,000, to render additional service to most of its existing resale "flat rate" customers, direct industrial customers—Aluminum Company of American and Bowaters Southern Paper Company, and Chattanooga. East Tennessee does not propose to construct the requested facilities until 1966 and contemplates using in the interim, additional unallocated capacity alleged to exist in the Tennessee system and for which a petition for the amendment of Commission's order of July 13, 1964, 32 FPC 114, in Docket No. CP64–165 has been filed by Tennessee.

East Tennessee does not, however, propose the construction of any facilities or demonstrate the ability through the utilization of unallocated capacity from Tennessee, to render service to Chattanooga that will enable the latter to offer Farmers Chemical any more than 65 percent firm and 35 percent interruptible service.

Presiding Examiner Fribourg's decision in Docket No. RP65–3 voiding the exclusive dealing provisions of the current service agreement between Chattanooga and East Tennessee nullifies East Tennessee's primary position in this proceeding. Likewise, East Tennessee's contention that the requirements of Farmers Chemical can and should be met on the basis of 65 percent firm and 35 percent interruptible cannot be accepted in the light of unequivocal testimony by Mr. Glenn Rucker, General Manager of Farmers Chemical, to the effect that interruptible deliveries are a hazardous and costly alternative to firm service and do not, consequently, meet the requirements of Farmers Chemical.

In the absence of any overriding conflict with the public interest, it appears to this Examiner that the choice of service is and should remain a prerogative of the purchaser and not become a dictate of the seller.

East Tennessee has also failed to prove that an adequate supply of gas is available from Tennessee Gas to meet the requirements of its proposal since Tennessee Gas' petition to amend the order in Docket No. CP64–165 requests permission to deliver an additional peak day volume of only 1,938 Mcf to East Tennessee. Assuming the approval of such petition, East Tennessee would have a total peak day entitlement of 205,895 Mcf which amount falls short by some 15,000 Mcf of the total amount of gas required to support the instant proposal.

Assuming also that Tennessee Gas would be certified to supply East Tennessee with 220,781 Mcf of gas, the record fails to demonstrate the capability of Tennessee Gas to furnish the necessary pressures required to move such a quantity into the East Tennessee system.

While application in Docket No. CP65–66 states that the facilities requested will enable East Tennessee to serve the additional requirements of Chattanooga, Aluminum Company of America, Bowaters Papers Company and other unspecified customers, the record shows that the specified amounts are not, in fact, additional quantities because at least two of the customers (Alcoa and Bowaters) have been receiving such quantities of firm gas since 1964 and regardless of the outcome of this proceeding will continue to receive the contract amounts.

In prognosticating the impact upon East Tennessee of the possible loss of the interruptible gas sales to Chattanooga for resale to Farmers Chemical, the parties to this proceeding have used as an initial base the estimated sales for the year 1964 in the amount of roughly 2,800,000 Mcf. Staff and Southern claim that the cross-examination of Mr. Cantrell,* elicited the witness' opinion that one-half of the projected loss could be sold to other interruptible customers by minimizing curtailments. East Tennessee, on the contrary, avows this claim is a misinterpretation of the evidence. The pertinent cross-examination relied upon by the parties appears at Transcript 3073–74 as follows:

> Q. If East Tennessee should lose the interruptible sales now made to Chattanooga Gas for delivery to Farmers Chemical, would not a substantial portion of that gas be utilized to minimize curtailment of other interruptible customers?
>
> A. *On the one hand, you could look at it that this would be true* and it would also tend to increase our total purchase gas cost because we would be operating at a lower load factor, and so the net effect would be harmful to East Tennessee.
>
> Q. Couldn't you sell that gas elsewhere?
>
> A. Mr. Tarver, if we knew where else we could sell some gas, we would do it. We have looked over our area and we don't know of any market to replace this right now.
>
> Q. Couldn't you sell on curtailment days to your existing interruptible customers gas equal to the amount of the Farmers Chemical sales, assuming you lose the Farmers Chemical sale of interruptible gas?
>
> A. We could not sell on the 20 days of minimum curtailment 2,800,000.
>
> Q. But you could sell approximately half of that on those curtailment days to your present interruptible customers?
>
> A. *If you look at it on a day-to-day basis, yes, I could sell on those days*, but the net result on a year-to-year operation would be a loss, and that is the only way you can look at it. [*Italic supplied.*]

The italicized portion of the first answer quoted above is directly responsive, but the remainder, in the opinion of the Examiner, is a *non sequitur*. Purchasing gas at a lower factor does not increase total purchased gas cost. The response to the second question must be interpreted in the light of the "elsewhere," meaning other than interruptible customers. The last answer affirms that one-half of the gas could be sold to other interruptible customers, but that there would still be the loss in sales of 1,400,000 Mcf on an annual basis, and the consequent loss in revenue less incremental expenses.

On the basis of these responses it is concluded that the impact determination must be made on the loss of one-half of the contemplated sales to be made to Farmers Chemical, since it is proposed herein to recognize the established firm service billing demands imposed on East Tennessee by Chattanooga. Such recognition, however, must be consistent with the provisions of East Tennessee's rate schedule, and will provide for a guaranteed annual load factor of 67 percent by Chattanooga in a new partial requirement schedule herein ordered. Since Chattanooga will be held to a maximum demand of

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*Franklin M. Cantrell, Jr., Vice President, East Tennessee Natural Gas Company.

32,345 Mcf,[2] no consideration need be given to Chattanooga's firm purchases, or to total "gross margin"[3] to measure impact.

The interruptible sales made by East Tennessee to Chattanooga for resale to consumers including Farmers Chemical, are made under the terms of Rate Schedule I–1, Interruptible Service. The official files of the Commission do not, however, reveal the existence of a contract covering interruptible service supplied by East Tennessee to Chattanooga nor does the tariff of East Tennessee contain a form of service agreement covering interruptible sales. The "AVAILABILITY AND APPLICABILITY AND CHARACTER OF SERVICE" provisions in the I-1 Rate Schedule include terms governing the application of a distributor to make a proposed interruptible sale but it is also clear that such terms provide for the service to be made available and to be purchased on a "when, as and if" basis, *i.e.* without commitment on the part of either the seller or buyer.

Under these circumstances, East Tennessee's claim that it must be assured a profit on its total existing market, including the interruptible portion thereof, is based upon the erroneous assumption of a continuing and binding obligation of the distributor and that the distributor only must guarantee to the pipeline its profit from such interruptible sales. Such a position is patently without merit where there is no covering contractual obligation unless public convenience and necessity considerations would force a conclusion to the contrary.

Using the methods followed in Appendix C of the East Tennessee brief and Appendix A to the Staff brief, the Examiner finds that due to the loss of sales by East Tennessee to Chattanooga for resale to Farmers Chemical in an annual volume of approximately 1,400,000 Mcf the net income of East Tennessee would be reduced by approximately $75,000. This sum represents a deficiency of only 1.4 mills per Mcf on the estimated 1964 sales of East Tennessee assuming the loss of one-half the Farmers Chemical load. Such an impact is *de minimis*.

In view of the foregoing, there is obviously no economic justification for the construction of the facilities requested. The Examiner therefore finds that the application in Docket No. CP65–66 is not required by public convenience and necessity and is hereby denied. Likewise, the petition by Tennessee Gas for the modification of the certificate of public convenience and necessity previously issued in Docket No. CP64–165 is rejected.

The Atlanta Market

The market evidence submitted by the parties fails to substantiate the alleged need by Atlanta Gas for more gas in the Atlanta area and the evidence offered by Atlanta Gas, Exhibits 66, 125, 126 and 127 has a tendency to obfuscate rather than to delineate its actual requirements. This is particularly true with respect to page 8, Section 3 of the supplemental sheets to Exhibit 66, which depicts revisions to the Atlanta area forecast for the 1967-68 year.[4] The final supplement to this material is Exhibit 127. The last exhibit and the information included in Exhibit 66, Section 4, page 1A, show the maximum day requirements for the Atlanta area to be purchased from Southern and Transco under contract demand rate schedules for the 1963-1964 year to be 283,490 Mcf and 19,267 Mcf respectively, or a total of 302,757 Mcf.[4a] The maximum day requirements to be purchased under the same schedules from the same suppliers for the 1967-1968 year are, however, estimated to be 258,470 Mcf and 59,267 Mcf respectively, or a total of 317,737 Mcf including the estimated requirements for the Suwannee, Cuming and Ball Ground areas. Thus, Atlanta Gas' forecast of increase in total contract demand service over current quantities is only 14,980 Mcf.

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[2] Established February 2, 1965.

[3] The term "gross margin" as utilized by East Tennessee is the difference between the revenues it receives from a distributor (Chattanooga) under all sales made at various rate schedules to that distributor and the incremental cost of purchased gas (including compressor fuel and control and line losses) required to make the various sales. East Tennessee's concept of "gross margin" is particularly inapplicable at this juncture because the validity of the rates used to compute revenues is before the Commission at this time in a Section 5(a) proceeding, *Knoxville Utilities Board, et al.* v. *East Tennessee Natural Gas Company*, defendant, in Docket No. RP65–4, 35 FPC 534, following the issuance of an Examiner's decision thereon on August 23, 1965, at p. 546.

The remainder of the gas supply for the Atlanta area of Atlanta Gas for the 1967-1968 period is shown in Exhibit 127 to consist of purchases from Transco under its GSS Rate Schedule (General Storage Service), for only 50 days' use of maximum requirement of such purchases, and under its LNG Rate Schedule (Liquefied Natural Gas) for five day's use of maximum requirement; unassigned gas volumes indicating approximately 58 days' use of maximum requirements; and liquefied petroleum gas used apparently for shaving sharpest peaks. Obviously the gas in these three categories is substantially different in availability from firm contract demand service. On the basis of this evidence the Examiner concludes that the market requirements of Atlanta Gas show a need of but 15,000 Mcf additional per day of contract demand service through the 1967-1968 winter heating season, the very quantity being delivered by existing facilities under temporary authority granted to Transco by Commission order of December 1, 1964.

Atlanta Gas supports its position to purchase 40,000 Mcf of additional gas per day from Transco by cutting back on Atlanta area purchases from Southern, claiming that such a cut back is not a decrease as such, but rather the transfer of contract demands from one area or billing group to another as permitted under Southern's tariff. There has been no evidentiary showing on the part of Atlanta Gas that there has been an actual transfer of the 25,000 Mcf of daily requirement or any part thereof to another area or billing group; rather, that company has relied upon an increase in total requirements from Southern at all delivery points to becloud a reduction in contract quantity in the Atlanta area. The fact remains that Atlanta Gas is proposing a decrease in purchases from Southern for the Atlanta area of approximately 25,000 Mcf per day, a proposal which would deprive Southern of substantial sales and revenues from an existing market which it has supplied for many years, on the basis of a tariff provision of doubtful validity under today's intense competition among pipelines for "new" markets.

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[4] Atlanta Gas Exhibit No. 66, both in its original form and as revised, contain peak day and annual volume supply data for actual and estimated periods disclosing purchases from Transco at load factors considerably in excess of 100 percent under its contract demand schedules, a seemingly impossible result. Further complexity is introduced by the listing of annual volumetric purchases from Transco of Rate Schedule GSS gas which would be available upon the purchaser's releasing contract demand gas for storage and later return. The sum of the two volumes increases the load factor of CD purchases.

[4a] Atlanta Gas' 1963-1964 Contract Demand from Southern of 283,490 Mcf was purchased under Southern's Rate Schedule CD-3 which contained a 90% billing ratchet. However, on November 1, 1964, when Atlanta Gas changed from Rate Schedule CD-3 to Rate Schedule OCD-3, under which the billing demand is the contract demand, it increased slightly its Atlanta area Contract Demand from Southern to 283,762 Mcf. Consequently, whether 1963-64 or 1964-65 is used as the base year for Atlanta Gas' Atlanta area Contract Demand from Southern, the result for all practical purposes is the same.

This Examiner is not convinced that the management of Southern would include in the General Terms and Conditions of its tariff a provision such as that in the section entitled "Decreases in Contract Demand," which is intended to or can be interpreted to permit a purchaser to transfer any portion of an existing load to a second supplier.* Furthermore, what is determinative at this point in a competitive application is not controlled solely by the terms contained in the tariff of a supplier, but rather in the opinion of the courts what is appropriate in the particular situation. In *United States* v. *El Paso Natural Gas Co., et al.*, 376 U.S. 651, 660, 12 L. Ed. 2d 12 (1964), the court stated:

> * * * Once the Commission grants authorization to construct facilities or to transport gas in interstate commerce, once the distributing contracts are made, a particular market is withdrawn from competition. *The competition then is for the new increments of demand that may emerge with an expanding population and with an expanding industrial or household use of gas.*

The Transco Application

As previously noted, Transco's application, Docket No. CP64–270, filed in conjunction with the application of Georgia-Tennessee, proposed the construction of facilities costing $20,100,000. Upon withdrawal of the latter application, Transco amended its application so as to extend the proposed 60-mile Georgia line some 66 additional miles in order to directly serve Chattanooga. It is alleged by Transco that newly discovered capacity already existing in its system ** will permit the entire undertaking, including the 66-mile additional pipeline, to be built for $2,300,000 less than the facilities embraced in the original application.

The projected improvements will make available third-year sales of 40,000 Mcf per day to Atlanta in the Atlanta area; 4,770 Mcf per day to Atlanta at Ringgold; 2,615 Mcf per day to Intercoastal; 5,550 Mcf per day to Dalton and 29,000 Mcf per day to Chattanooga, all under Transco's CD–1 Rate Schedule, except the sales to Intercoastal where the G–1 Rate Schedule will apply.

Transco's exhibits and testimony relating to economic feasibility of its proposed expansion, as amended, are based upon serving markets requiring 81,935 Mcf of capacity per day but it proposes to construct facilities which increase its system delivery capacity by only 47,045 Mcf per day. The remainder of the needed capacity, 34,890 Mcf per day, is excess capacity recently "discovered" following tests which revealed system capability in excess of design. Thus incremental revenues are based upon sales at a maximum of 81,935 Mcf per day but investment and operating costs for such sales reflect capacity additions of but 47,045 Mcf per day. Any feasibility study based on such figures is of little assistance to the Examiner or the Commission to weigh the merits of the competitive proposals of Transco and Southern. There can be no parity between the competing proposals in any real sense; and there are no data available to permit a determination of the investment and operating costs of the newly found capacity in the Transco system. However, an analysis of the competing projects is not required in view of factors heretofore or hereafter discussed which are more susceptible to determination of public convenience and necessity.

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*The increasing number of competitive certificate applications before this Commission emphasizes the necessity of scrutinizing tariff provisions in general which permit transfer of contracted demands among delivery points or billing groups and with the resulting contravention of the Commission's certificate authority. In the case of Southern, further difficulty is introduced by the fact that it has always received "open end" certificates from the Commission. As stated by counsel for Southern (Tr. 1119):

> Under Southern's method of operation the Commission authorizes the construction and operation of facilities rather than the sales of specific volumes of gas to particular customers. * * *

The hearing record amply discloses the problems arising out of interpretation of the portion of Southern's Tariff relating to Decrease in Contract Demand as shown on First Revised Sheet No. 40 in Sixth Revised Volume No. 1. If Southern so desires, it can take appropriate action to remove the ambiguities and inconsistencies therein revealed. The matter of "open end" certificates should, however, as a matter of policy, be of more than passing concern to the Commission.

** Witness Charles E. Schorre testified that the aditional capacity is 38,137 Mcf per day.

Other aspects of the Transco presentation which raise most serious doubts as to the merits of its proposed extension from Monroe to Chattanooga relate to tariff and rate schedule provisions and company policy in making lateral extensions. Transco proposes to construct a line 126 miles in length which would be perpendicular to its existing main lines. The revenues calculated to be received from the sales to be made from this extension are computed on the basis of the rates applicable in Zone 1 of the Transco system.

Transco's policy witness, R. Stewart Bruns, Jr., Vice President in Charge of Marketing, testified at length that it was not the policy of the company to make lateral extensions, and the rate schedules of the company contained availability provisions which required prospective customers to build facilities to connect with its main line system. In rebuttal, Transco engaged an independent consultant, Benjamin Schiffer, to contradict the direct testimony of its policy witness by contending there is nothing in the terms of the rate schedules applicable to contract demand or general service in Zones 1 and 2 that would require a customer to build the facilities necessary to connect with Transco's large diameter main line system. The evidence, however, shows that Transco has not built and did not intend to build lateral lines in these zones. Even though the wording of the "Availability" clauses of the schedules might be interpreted by some to permit lateral construction, the fact remains that the company has not done so and customers have had to build laterals at their own expense.* The Examiner is convinced that Transco's historical experience militates against the construction of laterals or main line extensions and the evidence advanced in this proceeding is insufficient to demonstrate the abandonment of the established precedent. Also, if permitted in this instance, the departure would obviously discriminate against existing customers who were in the past required to build facilities to reach Transco's main line.

Assuming, *arguendo*, that the line to Chattanooga could be constructed without deviation from past practices or from the provisions of the rate schedules, Southern and Staff have raised an issue as to the validity of applying Zone 1 rates to the sales proposed to be made to Intercoastal, Dalton, Atlanta at Ringgold, and Chattanooga. These parties contend that the Availability provision of the CD–1 and G–1 schedules applies to sales made to a purchaser "the pipe line or distribution system of which connects with or can be made to connect with Seller's main transmission system between the discharge side of Seller's Compressor Station No. 5 located near Eunice, Louisiana and the

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See: Transco's Rate Schedule X–9, FPC Gas Tariff, Original Volume No. II, effective April 1, 1954, and approved by James B. Henderson, Vice President (Transco), wherein it is stated: " * * This commitment is made pursuant to your (Transco's) policy that all laterals to serve your (Transco's) customers will in the future be paid for by the customer."

Georgia-South Carolina State Boundary; * * *" (Southern's Brief, page 145). The parties also contend that if sales were made to the four above-listed purchasers at Zone 1 rates there would be discrimination against Zone 2 customers who require a lesser number of miles of haulage but who pay the higher Zone 2 rates.

Implicit in a zoned pipeline system is the consideration that the distance of transmission is a fundamental determinant in establishing costs and rates among zones. In *Northern Natural Gas Company*, 14 FPC 11, 24, the first pipeline case which examined in depth the establishment of zone boundaries and rate zone differentials, the Commission set out principles to be followed in the future. The pertinent parts of the Opinion bearing upon the case at hand and which are controlling here are as follows: first, the Commission pointed to the relation of distance and cost factors saying,

> As previously stated, it is a simple economic fact that the delivery cost of natural gas increases in close proportion to the length of the transmission line of any given size. Therefore, unless other circumstances are present which outweigh the importance of the length of transmission required to effect delivery, the distance factor is the prime determinant of the cost of rendering service. Since in our view of this record there are no such circumstances present to counter-balance the distance factor, we conclude that the distance of transmission required to effect deliveries at the various points of sale by Northern reflects with reasonable accuracy the relative cost of providing service to its customers. We further find and conclude that Northern's present practice of demanding and collecting uniform rates throughout the length and breadth of its area of service for the sale of natural gas for resale is unjust, unreasonable, unduly discriminatory, and preferential. This practice results in the shifting of transmission cost from those whose service requires its incurrence by reason of the greater transportation distances to others who are not responsible for such cost—and who are not benefited correspondingly.

The Commission next found that zoning was required as follows:

> Having found and concluded that Northern's present uniform rate practice is unlawfully discriminatory and preferential, there is to be determined the manner in which the discrimination and preference may be most properly eliminated. In theory, the ideal, non-discriminatory, and non-preferential rate structure would be one designed to assess each point of sale and delivery with the total of the various cost components incurred in the rendering of service to each point. But any attempt to arrive at such perfection would be not only delusory,[16] but also impracticable and infeasible from both the management and regulatory point of view. In the circumstances of this case, the only practical and reasonable approach to an equitable solution is the establishment of service zones—with rate differentials—as urged by the Proponents of zoning and the Staff.
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> [16] *Colorado Interstate Gas Company* v. *Federal Power Commission, et al.*, 324 U.S. 581, 589; *Hamilton, Cost as a Standard of Price, supra;* Op. No. 225, *In the Matter of Atlantic Seaboard Corporation, et al.*, 11 FPC 43.
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> * * * * * * *
>
> Under each of these plans, including that found most proper by the Decision, determination of the zone in which a particular sale is made would be fixed by the point on the main line from which the lateral line enabling such sale takes off. All of Northern's sales of gas for resale are effected at the city gates of the communities served. In most instances these sales are made at the termini of lateral lines branching from the

> main line transmission facilities. Thus, the total distance of transmission to each point of delivery is represented by the aggregate of the mileage of transmission through both the main line and the lateral line serving each point of sale. As a result, as is elaborately pointed out by the Opponents, under each of these methods of zoning the total mileage of transmission to certain points in zones closer to the source of supply is greater than the mileage to other points of sale in zones farther removed from the source. Under each of the plans considered, including the Examiner's, deliveries to certain points requiring the greater mileage of transmission would be made at the lesser rate.
>
> The foregoing is sufficient in our view to condemn each of these methods on zoning. * * *

The following quotations from the same decision have direct significance in relation to the total miles of haul to the proposed points of delivery on the Chattanooga line, regardless of whether such line is termed a lateral or a main line extension.

The Commission then established zones which it considered to be reasonable: namely,

> Considering the foregoing, and all other facts of record, it is our opinion that the most appropriate and practicable method would be the establishment of three zones on Northern's system with zone boundaries as depicted on the map following this page.[18] (Illustration in this instance is more desirable—and more effective—than description.) This plan, in our view, provides the most effective and equitable basis for eliminating the present unlawful discrimination and preference.
>
> As noted previously, the Bushton Compressor Station is the last point of input of gas into the main-line facilities. Under this plan, the service area north of the Bushton station, wherein more than 99 per cent of the jurisdictional sales are made, is divided into three zones which are as nearly equal as they can reasonably be so far as transmission distances are involved. Zone 1 embraces all sales requiring transmission to the point of delivery, including that made through lateral lines, for a distance of 191.0 miles beyond the Bushton station. Sales made at points south of the Bushton station, including sales in the so-called Argus System, also fall within Zone 1. All sales made on the west leg of the system requiring transmission up to a distance of 190.43 miles beyond the Zone 1 northern boundary and all sales made on the east leg of the system requiring transmission up to a distance of 190.15 miles beyond the Zone 1 boundary fall within Zone 2. Sales falling in Zone 3 require transmission for a maximum distance of 180.8 miles on the west leg and 183.0 miles on the east leg beyond the northern boundary of Zone 2. As estimated for the year 1954, jurisdictional sales in Zone 1 would amount to 2,508,100 Mcf, of 1.07 per cent of the total of such sales, 103,620,800 Mcf or 44.17 per cent in Zone 2, and 128,459,300 Mcf or 54.76 per cent in Zone 3.
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> [18] These three zones encompass the whole of Northern's system north of the Oklahoma-Kansas boundary, which is the area in which all of its sales are made. It would seem appropriate also to designate the area south of the Oklahoma-Kansas line where Northern has facilities as "Zone A."

The evidence of record shows that Transco's Zone 2 begins at the Georgia-South Carolina boundary which is 62 miles downstream from the point of takeoff of the proposed Monroe to Chattanooga line. It also shows a number of deliveries made by Transco to communities in South Carolina which require a lesser number of miles of haulage than if gas were delivered to Chattanooga.

As compared with the 62 miles of haulage from Monroe to the Zone 2 border, the following are the mileages to proposed delivery points on the Monroe-Chattanooga line:

	Miles
Intercoastal—Fairmount	76
Intercoastal—Ranger	81
Intercoastal—Ellijay	90
Intercoastal—Chatsworth	100
Dalton	109
Atlanta Gas—Ringgold	120
Chattanooga	126

On the basis of the foregoing the Examiner concludes the rates applicable to the sales proposed to be made by Transco to Intercoastal, Dalton, Atlanta Gas at Ringgold, and Chattanooga are its Zone 2 rate schedules. Since the proposed sales by Transco to Chattanooga Gas are acceptable to the latter company for its stated market requirements only if Transco's Zone 1 rates are in effect, there is no demonstration by Transco of a market in Tennessee.

In summary, the Transco application with the exception of the 15,000 Mcf per day presently being delivered to Atlanta Gas must be denied. First, because construction of the proposed lateral from Monroe to Chattanooga with the resulting sales in the north Georgia area at Zone 1 rates would discriminate against existing customers and secondly, because the record discloses no evidence of a market for such sales at Zone 2 rates.

The Southern Application

Southern's application in Docket No. CP64-314, seeks authorization to construct and operate facilities to enable it to increase system capacity by 180,000 Mcf per day to a total of 1,711,000 Mcf, of which 32,145 Mcf will be excess capacity in the third year of operation. The facilities proposed to be constructed include (1) 27,660 horsepower of additional compression at new or existing stations on the South Louisiana Supply System required for the transportation of the additional volumes of sales to be made; (2) six new compressor stations on Southern's south line having a total rating of 62,900 horsepower; (3) 3,210 horsepower of additional compression at existing stations on Southern's north line; (4) 35.0 miles of 14-inch loop on the Macon-Atlanta line; (5) a proposed North Atlanta lateral line consisting of 45.5 miles of 16-inch line, and (6) the Chattanooga line which includes one new 1,100 horsepower compressor station, 49.2 miles of 14-inch loop line extending from the takeoff point on the north line to the vicinity of Rome, Georgia, and 62.8 miles of 12¾-inch line reaching from Rome to the Georgia-Tennessee border in the vicinity of Chattanooga.

Southern's application in Docket No. CP64-259, with the exception of a small additional allocation to Dalton amounting to some 1,450 Mcf per day, is not in controversy.

The applications in Docket Nos. CP64-259 and CP64-314, as previously mentioned, are designed to increase Southern's system capacity by 16,000 and 180,000 Mcf per day, respectively. Such increased capacity will supply the forecast 1967-1968 firm requirements of present and proposed customers and, in addition, provide excess capacity of 32,145 Mcf per day. The market requirements were fully supported except as to the requirements of Atlanta Gas from the proposed North Atlanta line. No question was raised as to the market requirements of Southern's customers who are in a non-competitive position as between Transco and Southern, while the needs of the competitive market, exclusive of Atlanta Gas' Atlanta area which has heretofore been decided, have been relied upon by both Transco and Southern.

Intercoastal, an intervener in these proceedings, did not file an application for delivery of gas by Southern and the route of Southern's proposed Chattanooga line does not pass in the immediate vicinity of the towns in which Intercoastal proposes to distribute gas. Intercoastal prefers and has executed a contract to purchase gas from Transco, but is willing to buy its needs from Southern provided the latter is authorized to build a line to Chattanooga.

Satisfactory evidence was presented by Intercoastal as to the markets it proposes to serve, as to feasibility, and its ability to finance its project.[5] The evidence clearly shows that the five communities to be served will benefit by the introduction of gas service and such service should be authorized if not inconsistent with the interests of other segments of the public. The Staff, however, recommends that gas service to Intercoastal be denied because "there is no application or petition seeking an allocation of gas from Southern by Intercoastal pending before the Examiner in the instant proceeding." Intercoastal's reply brief argues that the matter of service from Southern has been present in the proceeding since the inception of Southern's formal participation. The Examiner agrees.

There is no doubt that, under the circumstances presented here, the Commission can, by appropriate condition, require Southern to supply Intercoastal. Section 7(e) of the Natural Gas Act; *Natural Gas Pipeline Company of America*, 17 FPC 85, 87; *Houston Texas Gas and Oil Corp.*, 17 FPC 303, 309; *Northern Natural Gas Company*, 11 FPC 174, 187.

Southern's President, Mr. C. P. Rather, testified that Southern would accept such a condition and another Southern witness[6] presented, as an exhibit, a map (Exhibit 118) showing the required service could be provided by a line taking off from Southern's proposed Chattanooga line near Dalton and running Southeasterly to Chatsworth, Ranger and Fairmont. The cost of the required facilities is estimated to be approximately $600,000. The proposed line would be 30 plus miles long and would consist of 4½ inch, 3½ inch and 2⅜ inch pipe and would have a delivery capacity substantially in excess of third-year firm peak day requirements of 2,613 Mcf. Although Intercoastal would prefer that the line be of larger capacity, the record shows the projected sizes to be ample.

Transco objects to service to Intercoastal by Southern, contending the operation of the connecting line to be uneconomical. Southern admits this to be a fact but takes the position that the Intercoastal facilities must be considered as an integral part of Southern's entire project and, as such, will have little effect on the total economics involved. Southern's Exhibit 35, page 11, and Exhibit 55, Schedule 13, page 1, demonstrate the effect of including the Intercoastal line with the Docket No. CP64–314 facilities would reduce the rate of return for the the entire system gas operations by approximately 0.02 of one percent and rate of return attributable to the proposed facilities by 0.3 of one percent. Service to Intercoastal will, therefore, not impose an undue burden on Southern's other customers.

In this respect the Commission stated in *Southern Natural Gas Company, et al.* (Docket No. CP63–26, *et al.*), 31 FPC 789, 796, as follows:

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[5] The Georgia Public Service Commission found Intercoastal's project feasible and in the public interest.

[6] William T. Ivey, Chief Statistician and Planning Engineer.

> We do not believe that it is the function of this Commission to bar a pipeline under our jurisdiction from extending natural gas service, and the benefits to be derived therefrom, to an area not presently being served solely on the ground that the revenues expected to be produced by the third year of operation may not quite measure up to the return the Commission has allowed on the existing system operations. Rather, the extension of branch lines for the purpose of filling in existing service areas is to be encouraged wherever and whenever possible, provided that no undue burden is placed on the existing customers. Construction of new facilities of the type herein applied for may, for a time, somewhat reduce the overall systemwide rate of return.

Also, there is little more justification for considering service to Intercoastal separately from the rest of the project than there is to require service to Dalton or Atlanta Gas at Ringgold be shown separately as economically feasible. The primary means by which all of the services in the area, including Intercoastal, are to be rendered is through the medium of a single lateral extending from Rome to Chattanooga; the smaller diameter pipe which will bring gas to the five towns in Appalachia that Intercoastal proposes to serve is not of controlling importance since the cost is only $600,000 as compared with $2,871,400, the cost of the proposed line from Rome to Chattanooga. Since Southern has stated the proposed method of serving Intercoastal is the most economical, it must be assumed that a change in Southern's design in order to extend its Rome to Chattanooga line to the east along the route proposed to be traversed by Transco is more costly and will produce no additional revenues.

The Examiner concludes that it is proper to view the facilities required to serve Intercoastal as an integral part of the service which Southern proposes for Chattanooga and the northwest Georgia area and, therefore, public convenience and necessity dictates that Southern be required to extend the proffered service to Intercoastal.

Southern's agreement with Atlanta Gas to provide service from the North Atlanta line was made contingent upon Atlanta Gas being unable to purchase an additional 40,000 Mcf per day from Transco in the event of Transco's failure to receive a certificate in these proceedings. The Examiner has determined that Transco's application should be denied except to the extent of permanently certificating 15,000 Mcf per day as presently authorized by the Commission under the temporary certificate. Since the market evidence shows there is no need for greater contract demand quantities in the Atlanta area of Atlanta Gas than the aforementioned 15,000 Mcf per day, there is obviously no need to authorize the construction of the North Atlanta line.[7] Southern's contract demand quantities with Atlanta Gas for the Atlanta area consequently will remain in effect and it will not lose the 25,292 Mcf per day in sales which would have occurred had Transco been authorized to make the additional deliveries to Atlanta Gas of 40,000 Mcf per day.

The record also shows that if the North Atlanta line is not certificated it will be unnecessary for Southern to build 12.76 miles of the proposed 35 miles of 14-inch loop on its Macon-to-Atlanta line. Elimination of these two items will reduce Southern's projected investment by $3,168,241.

Transco raises two minor points concerning the facilities Southern proposes to construct. First, it claims that Southern's design of the northwest Georgia-

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[7] In Southern's reply brief it asserts, "It was to prevent this situation (the reduction in contract demand by 25,292 Mcf per day) that Southern proposed to Atlanta Gas the construction of the North Atlanta line.*" (Footnote omitted.)

Chattanooga line will leave only 2,745 Mcf per day of excess saleable capacity if Intercoastal is to receive service. By contrast, Transco's proposal to serve the same area would provide excess capacity of 46,548 Mcf per day above third-year requirements of 43,385 Mcf per day "* * * thus permitting Transco to serve increased requirements beyond the third year without any additional investment cost."

The Examiner might agree with the first point if it was not for the fact that Transco admits in its brief that additional requirements above third-year estimates could be served through Southern's construction of additional facilities. On the other hand, it is not possible to read from the record that the market requirements of northwest Georgia will increase by more than 100 percent and justify the Transco proposal as a prudent investment.

The second point in the Transco brief is that while it has no direct interest in the question of excess capacity on Southern's system, it wishes to protect its position that such excess capacity should not be installed for the express purpose of making "overrun gas" available.

Mr. Ivey testified without contradiction that the facilities proposed in Docket No. CP64–314 will increase Southern's daily design delivery capacity by 180,000 Mcf and provide excess capacity of 32,145 Mcf per day. It would, therefore, be inconsistent with the best interest of Southern and its customers to preclude making sales of "overrun gas" during a period in which the excess capacity will gradually be transferred to firm customers as contract demand quantities. In *Southern Natural Gas Company, et al.*, Docket No. CP63–26, *et al.*, *supra*, the Commission, at page 793, stated:

> * * * In past Southern expansions the Commission has approved programs providing for first-year capacity well in excess of existing contract requirements and, most recently,[5] substantially in excess of its estimated third-year daily delivery obligations. In each instance the firm contract demand has built up within a short time to utilize almost the entire increased design capacity. A comparison of the average estimated increase of 36,341 Mcf in firm peak-day market requirements for 1963–64, 1964–65, and 1965–1966 with actual experience of Southern in the preceding 10-year period, where the firm contract daily delivery obligation increased at an average rate of 71,159 Mcf in each season, indicates little basis for concluding that any overbuilding of capacity will result from approval of the proposed addition to main line facilities.
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> [5] *South Georgia Natural Gas Company, et al.*, Docket No. G–9892, *et al.*, Opinion No. 325, 22 FPC 211 (1959). The Commission there stated:
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> > Southern's system in its design and operations differs from many other pipeline systems; over the years as Southern's pipeline has grown, the excess capacity on its system has varied from a substantial amount to very little, due perhaps to the disparate character of its system and operations, among other facts. The amount of excess capacity resulting from its present proposals [57,000 Mcf] appears to be reasonably within the range it has experienced in the past. This amount may reasonably be expected to decline as the company's operations continue. [22 FPC at p. 215.]

The Examiner's position here in allowing excess capacity to be built is entirely consistent with the position taken by him in *Natural Gas Pipeline Company of America*, Docket No. CP63–174, decision issued October 22, 1964, in which he found unallocated capacity of less than 1.2 percent of the Applicant's total transmission capacity does not appear to be unreasonable. (33 FPC 545 at 556.)

The following quotation from Opinion No. 379 is dispositive of the need for Southern's making "overrun gas" sales:

> Southern serves an area of the United States which does not experience prolonged periods of cold weather, and consequently has a high percentage

of sales or industrial use, either directly or through its resale customers, to balance its firm loads for domestic and commercial use. Approximately 50 percent of Southern's jurisdictional deliveries are for resale to industrial customers, with residential and commercial firm loads operating at about 30 percent annual load factor. Of its total system deliveries, approximately 25 percent is sold directly to industrial customers, the bulk of such sales being on an interruptible basis. Economic operations of Southern's system requires the maintenance of these industrial loads,[28] which have been built up on the basis of the rate patterns heretofore evolved through a series of rate settlements approved by the Commission.

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[28] The importance of industrial sales to Southern's system operations is heightened by the fact that Southern has no available underground storage facilities. Southern must therefore either market its minimum commitments for purchased gas or pay for gas not taken. During the test year Southern's total volume of purchased gas exceeded its minimum take-or-pay requirements by only 2.3 percent. (*Southern Natural Gas Company,* Docket Nos. G–20509 and RP60–15, 29 FPC 323, 348–349.)

The foregoing constitutes a clear showing on the part of Southern of the adequacy of the facilities here proposed, excepting the North Atlanta line and associated loop facilities on the Macon-to-Atlanta line heretofore excluded.

Southern's Exhibit 55, Schedule 7, shows a 10.6 percent rate of return on the cost of the total facilities proposed to be constructed in these proceedings for the third year of operations while its Exhibit 57–B, Schedule 1, shows revenues in excess of the cost of service of $385,000 for the North Atlanta line, $402,000 for the Rome to Chattanooga line, and $1,271,000 for other sales or a total of $2,058,000.

Transco, East Tennessee and Staff object to one or more of the methods used by Southern in determining economic feasibility including: exaggerated revenues, improper income tax computations, understatement of purchased gas and produced gas costs, failure to attribute sufficient costs to the competitive services, etc., as set forth in briefs. Transco's Exhibit 139 and the testimony relating thereto are claimed to portray the adjusted revenues, cost of service and rate of return on rate base attributable to Southern's proposed facilities in Docket No. CP64–314, including Intercoastal, after making the adjustments to Southern's Exhibit No. 57–B deemed proper by Transco to conform to its concept of a proper cost of service. Transco shows a presumably correct rate of return of 6.91 percent on the proposed facilities.

While the Examiner does not agree with many of the adjustments made by Transco, it is an anti-climax to discuss these matters following the feasibility showing in the rebuttal case. It is true, of course, that Exhibit No. 140 of Transco does indicate a rate of return of but 5.48 percent on the Rome to Chattanooga line after making its adjustments to Southern's cost of service and it shows a revenue deficiency of $183,000, an amount that could hardly be claimed a burden upon the total company estimated third-year sales of some 463,000,000 Mcf. It must be noted that such deficiency was arrived at by a method of proration of costs among the several lines and in complete disregard of the actual facility costs properly attributed to the lines by Southern's witnesses. The Examiner believes that an incremental cost showing as required by Section 157.14(a)(16), (i) and (ii) of the Regulations under the Natural Gas Act relates solely to the *cost* of the proposed facilities rather than to some proposed allocation of such costs. As shown by Appendix A to Southern' reply brief, if the actual cost of lines were substituted in Transco's Exhibit No. 140 in place of the allocated costs, the return on the Rome to Chattanooga line would be 6.82 percent, or 0.32 percent greater than the rate of return used in the feasibility study.

In viewing the overall feasibility study, it is noted there is 32,145 Mcf per day of excess capacity proposed to be built into the system and that Southern has not assigned any revenues to such capacity in its feasibility studies. As noted, *supra*, the Commission has found that such excess capacity has normally been taken up by firm customers. Thus, it is entirely logical to anticipate that the past experience of Southern will be repeated and the excess capacity used to serve its customers before the end of the third-year period, making the project more economically beneficial to Southern and its customers than is shown by Southern's exhibits.

Finally, the Examiner takes notice of the Commission's Notice of Proposed Statement of Policy issued November 2, 1965, in Docket No. R-293, wherein it is stated:

> The Commission has considered these matters in light of its recent experience and has decided to adopt a policy of encouraging the established pipeline companies subject to its jurisdiction to plan their future expansions so as to provide reserve capacity in the order of one year's growth. The costs associated with such reserve capacity that has been certificated would be considered a prudent investment in any rate proceeding. We believe the construction and operating savings resulting from longer-range planning and other advantages previously mentioned would offset the small addition to the rate base.

The feasibility of Southern's proposals as heretofore adumbrated is, in the opinion of the Examiner, fully demonstrated.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including briefs and arguments of counsel, it is found and concluded in addition to all other findings and conclusions contained herein that:

(1) Southern, Transco, East Tennessee and Tennessee Gas are "natural-gas companies" within the meaning of the Natural Gas Act.

(2) The facilities which Southern proposes to construct and operate, as described in its applications in Docket Nos. CP64-259 and CP64-314, will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission and the construction and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The facilities referred to in paragraph (2) are adequate and appropriate to render the services which Southern proposes, and which Southern is hereinafter authorized to provide.

(4) Southern is able and willing properly to do the acts, to make the sales and to perform the services proposed by it in Docket Nos. CP64-259 and CP64-314, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the facilities and the new sales of natural gas proposed by Southern in the aforesaid applications and as herein approved are required by the public convenience and necessity and certificates therefor shall be issued as hereinafter ordered and conditioned.

(6) The public convenience and necessity require (a) that the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificates hereinunder issued to Southern and to the exercise of the rights granted thereunder, and (b) that the time within which the facilities authorized by this order shall be constructed and placed in actual

operation shall be fixed at one year from the effective date of the final order herein.

(7) The application of Transco in Docket No. CP64–270 is denied except as to the increment of 15,000 Mcf per day being supplied to Atlanta Gas pursuant to the temporary certificate granted by the Commission on December 1, 1964.

(8) The application of East Tennessee in Docket No. CP65–66 is denied.

(9) The petition of Tennessee Gas in Docket No. CP64–165 is denied.

(10) Except for that portion of Southern's application in Docket No. CP64–314 dealing with the construction of the North Atlanta lateral, the service to be rendered therefrom, and the construction of the related portion of the proposed Macon to Atlanta loop, all of which are denied, the applications of Southern in Docket Nos. CP64–259 and CP64–314 are authorized subject to the conditions that (1) within 20 days of the Commission's final order herein, Southern shall file an acceptable executed service agreement with Chattanooga Gas binding the latter to an established third-year contract demand of not less than 29,000 Mcf per day and (2) an agreement executed by Chattanooga, and served upon East Tennessee guaranteeing to the latter, purchases by Chattanooga of a contract demand of not less than 31,500 Mcf per day at an annual load factor of 67 percent and (3) Southern will complete the necessary construction to render service to Intercoastal.

(11) The authorization herein granted to Southern and the conditions imposed thereon are necessary and required by the public convenience and necessity.

(12) The certification of Southern along with the necessary conditions imposed thereon will not result in any detriment, economic or otherwise, to East Tennessee or the East Tennessee Interveners.

(13) In view of the denial of authorization to construct any of the facilities proposed by Transco in its application in Docket No. CP64–270 and Southern's North Atlanta line in Docket No. CP64–314, all applicants or 7(a) interveners seeking service from said facilities, with the exception of Intercoastal, must be denied, namely: City of Buford, Docket Nos. CP65–11 and CP65–20; City of Sugar Hill, Docket Nos. CP65–10 and CP65–19 and the City of Austell, Docket No. CP65–74.

(14) The matter concerning the purchase of the 42-mile lateral by Southern from Dalton is not a proper issue in this proceeding and the latter's request for the imposition of a condition requiring the purchase of such line is rejected.

(15) Since the filed Southern tariffs apparently do not provide for deliveries within the State of Tennessee, the certificate authorized herein shall not be construed as permitting deliveries of natural gas to Chattanooga Gas within the boundaries of the State of Tennessee.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided by the Commission's Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Southern Natural Gas Company to construct and operate the proposed facilities as hereinbefore approved and subject to the terms and conditions specifically attached thereto.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Transcontinental Gas Pipe Line Corporation with respect to the 15,000 Mcf per day now being supplied to Atlanta Gas Light Company pursuant to a temporary certificate.

(C) The certificates issued to Southern and Transco shall be accepted in writing by a responsible official of the respective corporations, and the general terms and conditions set forth in paragraphs (a), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of such certificates, and to the exercise of the rights granted thereunder.

(D) East Tennessee Natural Gas Company shall file a partial requirement rate schedule, satisfactory to the Commission, not less than sixty days before the commencement of service by Southern Natural Gas Company to Chattanooga Gas Company, which schedule shall contain a contract demand of not less than 31,500 Mcf per day at an annual load factor of 67 percent.

AMES W. WILLIAMS,
Presiding Examiner.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CHAMPLIN PETROLEUM COMPANY, DOCKET NO. RI62-233, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING NOTICES OF CHANGE, SEVERING AND TERMINATING PROCEEDINGS AND REQUIRING REFUNDS

(Issued June 10, 1966)

On April 12, 1966, Champlin Petroleum Company (Champlin) filed an offer of settlement pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and consistent with the provisions of the Second and Seventh Amendments to the Statement of General Policy No. 61-1 (18 CFR 2.56).[2] The proposal involves proposed rate increases for seventeen sales of natural gas made by Champlin to natural gas pipeline companies in fields located in the states of Kansas, Oklahoma and Texas. Each of the proposed increased rates were suspended by order of the Commission, and placed in effect, subject to refund, after the statutory suspension period by Champlin filing a motion and appropriate refund assurance in accordance with Section 4 of the Natural Gas Act.

Champlin proposes to:

(1) Delete all periodic price increase provisions from the subject rate schedules.[3]

(2) Extend the term to April 12, 1971, of any contract involved herein which has a remaining term of less than five years from April 12, 1966.[4]

(3) Reduce rates in Texas Railroad Commission District Nos. 2, 4, and 6 to a settlement rate of 15.0¢ per Mcf. The sales in Kansas and Oklahoma

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[1] The other dockets involved in Champlin's proposal are set forth in the appendix hereto.

[2] The 50% signatory interest of Socony Mobil Oil Company, Inc., in sales under Champlin's FPC Gas Rate Schedule No. 27, which is involved in Docket No. RI65-196, is not included in this settlement. Socony has filed a certificate application in Docket No. CI66-1037 and a rate schedule to cover its interest in this sale, as well as a motion to be made a respondent in Docket No. RI65-196. Action has not yet been taken on these filings.

[3] Favored-nation and other indeterminate rate provisions were previously deleted from these contracts in accordance with the Commission order issued June 27, 1960, in Docket No. G-9277, *et al.*, 23 FPC 861.

[4] This is applicable to Champlin's FPC Gas Rate Schedule Nos. 2, 9 and 53.

(Other) will continue at the currently effective 12.0¢ per Mcf rate with no reduction in rate.

(4) Reserve the right to file for any contractually authorized increases in tax reimbursement.

Approval of Champlin's offer of settlement will result in an estimated refund of monies collected subject to refund of $343,000, including interest, through February 28, 1966.

We believe that Champlin's settlement proposal is in the public interest and shall approve the same. However, we desire to make it clear that acceptance of Champlin's offer of settlement shall not be construed as approval of any future increased rate that may be filed in accordance with its reservation of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceeding involving Champlin's rates and rate schedules. Additionally, for all of the reasons set forth in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require Champlin to deposit the refund monies in a special escrow account or to commingle the retained refunds with its general assets pending future order of the Commission.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Champlin on April 12, 1966, is consistent with the Second and Seventh Amendments to the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed with the Commission by Champlin on April 12, 1966, is approved in accordance with the provisions of this order.

(B) Champlin shall file, within 30 days from the date of issuance of this order, notices of change in rates under its FPC Gas Rate Schedules to reflect the settlement rates and executed contract amendments in accordance with the terms of its settlement proposal, as approved herein. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Champlin shall compute the difference between the rates collected subject to refund and the settlement rates for the sales for which it proposes to make refunds with applicable interest to February 28, 1966, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipeline purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

(D) Champlin shall retain the amounts shown in the report required under paragraph (C) above, subject to further action of the Commission directing the disposition of those amounts.

(E) Champlin may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Champlin and any bank or trust company used as a depository of funds of the United States Government and the Agreement shall be conditioned as follows:

(1) Champlin, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be paid out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If Champlin elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention so to do within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 5½% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that Champlin has complied with the terms and conditions of this order, the settlement rates set forth in the Appendix shall be effective as of the date of issuance of this order; the proceedings in Docket Nos. RI62-233 (only insofar as RI62-233 pertains to Rate Schedule No. 42), RI62-242 RI63-206, RI63-214, RI64-200, RI64-375 (only insofar as RI64-375 pertains to Rate Schedule Nos. 4, 17, and 21), RI65-196 (except for the 50% interest of Socony Mobil Oil Company, Inc. as covered under Champlin's Rate Schedule No. 27), RI65-197 and RI65-198 shall terminate; Docket Nos. RI64-375, RI65-196 (except for the 50% interest of Socony Mobil Oil Company, Inc. as covered under Champlin's Rate Schedule No. 27) and RI65-198 shall be severed from the Area Rate Proceeding, Docket No. AR64-2; and Docket Nos. RI62-242, RI62-233 and RI63-214 shall be severed from the Area Rate Proceeding, Docket No. AR64-1, all without further order of the Commission.

(H) The acceptance by the Commission of Champlin's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Champlin and is without prejudice to claims or contentions which may be made by Champlin, the Commission staff, or any affected party hereto, in any proceedings.

APPENDIX A

CHAMPLIN PETROLEUM COMPANY

Docket No. RI62-233, *et al.*

Rate schedule and Supplement No.	Purchaser	Rate increase docket number	Effective date	Rates*		
				Approved	Suspended	Settlement
Texas RRC District 2:						
4-10	Tennessee Gas Transmission Company	RI64-375	6-1-64	14.6	15.6	15.0
17-4	Tennessee Gas Transmission Company	RI64-375	6-1-64	14.6	15.6	15.0
21-4	Tennessee Gas Transmission Company	RI64-375	6-1-64	14.6	15.6	15.0
Texas RRC District 4:						
5-11	Tennessee Gas Transmission Company	RI65-196	4-1-65	14.6	15.6	15.0
6-5	Tennessee Gas Transmission Company	RI65-197	4-1-65	14.6	15.6	15.0
7-5	Tennessee Gas Transmission Company	RI65-197	4-1-65	14.6	15.6	15.0
8-6	Tennessee Gas Transmission Company	RI65-196	4-1-65	14.6	15.6	15.0
9-7	Tennessee Gas Transmission Company	RI65-198	4-1-65	14.6	15.6	15.0
27-4	Texas Eastern Transmission Corporation	RI65-196	4-1-65	14.6	15.6	15.0
Texas RRC District 6:						
2-7	Texas Eastern Transmission Corporation	RI64-200	4-1-64	14.6	15.6	15.0
3-8	Tennessee Gas Transmission Company	RI65-196	4-1-65	14.4248	15.4248	15.0
18-4	Tennessee Gas Transmission Company	RI65-196	4-1-65	14.4248	15.4248	15.0
22-4	Tennessee Gas Transmission Company	RI65-196	4-1-65	14.4248	15.4248	15.0
Oklahoma (other):						
53-5	Cities Service Gas Company	RI63-206	6-1-63	11.0	12.0	12.0
Kansas:						
41-12	Northern Natural Gas Company	RI62-242	6-1-62	11.0	12.0	12.0
42-5	Northern Natural Gas Company	RI62-233	6-1-62	11.0	12.0	12.0
44-4	Northern Natural Gas Company	RI63-214	6-1-63	11.0	12.0	12.0

*All rates are at a 14.65 psia pressure base.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GEORGIA POWER COMPANY, DOCKET NOS. E-7099 AND E-7193

ORDER EXTENDING TIME FOR FILING RATE SUPPLEMENTS IN COMPLIANCE WITH COMMISSION OPINION NO. 487

(Issued June 10, 1966)

By paragraph (A) of Opinion No. 487 in this docket, issued March 30, 1966, 35 FPC 436, the Commission ordered Georgia Power Company, Atlanta, Georgia, to file within 75 days (by June 13, 1966) rate schedule supplements to its rate schedules for resale service to each of its 50 wholesale municipal customers consistent with the Commission's findings and order in the Opinion. By amendment filed May 9, 1966, to an Application for Rehearing filed April 28, 1966, Georgia Power requested a Stay of the Commission's order pending court appeal. On May 26, 1966, Opinion No. 487-A, 35 FPC 818, the Commission denied the Application for Rehearing and the Motion for Stay.

On June 9, 1966, Georgia Power filed a Motion For Interim Stay in the Court of Appeals for the Fifth Circuit. The Commission finds that it is appropriate to carry out the purposes of the Federal Power Act to extend the time for filing of the rate schedule supplements ordered in paragraph (A) of Opinion No. 487 to and including June 28, 1966, solely in order to afford time for the Commission and other parties to respond to Georgia Power's motion for stay and for the Court to hear oral argument on the motion if it so desires.

The Commission orders:

The time for filing rate schedule supplements by Georgia Power Company in compliance with the Commission's Opinion No. 487 is extended to and including June 28, 1966.

CHARLES L. REED, LOUIS FABIAN, ET AL., DOCKET NO. CI66-16

ORDER ADOPTING PRESIDING EXAMINER'S INITIAL DECISION

(Issued June 10, 1966)*

Syllabus

In a proceeding under Section 7(b) of the Natural Gas Act, Commission *allows* producers to abandon intermediate sale to middleman where producer has built own lateral out to interstate pipeline purchaser and proposes to sell to latter direct, at no increase in cost to interstate purchaser or consumer.

John S. Bailey, Jr., for Charles L. Reed, Louis Fabian, *et al.*, a partnership.

H. R. Jackson, C. W. Jackson and *Herman S. Harvey, Jr.* for Penova Interests.

Agnes Mae Wilson for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

In this proceeding, the applicant Charles L. Reed, Louis Fabian, *et al.* has filed for permission under Section 7(b) of the Natural Gas Act to abandon the sale of gas from certain leases in Ritchie County, West Virginia, to a joint enterprise known as the Penova Interests. The Penova Interests now resell the gas to Consolidated Gas Supply Corporation, and Reed, Fabian, *et al.* now proposes to sell the gas directly to Consolidated at the guideline price.

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*Initial decision appears on p. 955.

Presiding Examiner William L. Ellis granted the application for abandonment to become effective upon Reed, Fabian, *et al.* completing arrangements with Consolidated for the sale of gas, the issuance of the certificate by the Commission, and the commencement of delivery and service.

No exceptions have been filed to the examiner's initial decision by any party to these proceedings. The examiner's decision reviews the facts and reaches, in our opinion, a proper determination.

The Commission finds:

Upon consideration of the evidence of record in these proceedings, the briefs filed and the examiner's decision, we are of the opinion that the examiner's decision should be adopted as our own.

The Commission orders:

The initial decision of the presiding examiner issued herein on May 2, 1966, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON A PRODUCER'S APPLICATION TO ABANDON A SALE

(Issued May 2, 1966)

ELLIS, *Presiding Examiner:*

I

NATURE OF THE CASE

An independent producer of natural gas in West Virginia asks the Commission's permission under the Natural Gas Act to "abandon" (*i.e.*, to cease) his sale of gas to an intermediate gatherer or transporter in order that the producer can sell at a higher price to the interstate pipeline which now buys the gas from the intermediate. The latter's protest now has been withdrawn.

II

PROCEDURAL RECORD

The producer's application was filed in July of 1965 and promptly was made the subject of a public notice by the Federal Power Commission. When the intermediate buyer filed a letter of protest, the Commission set the case for hearing by order of December 6, 1965, which took place on March 1, 1966. The final date for briefing was April 25, by which time the only brief filed was an initial one on behalf of the producer who wants the Commission's permission to abandon. Instead of a brief, the intermediate buyer filed the following letter of withdrawal of his protest and opposition:

> This is to advise you that Penova Interests hereby withdraws its opposition to the formal request made by Louis Fabian for approved cancellation of his contract with Penova in the above-captioned matter.
>
> Our decision to withdraw from this case is based upon circumstances which preclude Penova from undertaking the time and expense necessary to making an effective presentation of our position in opposition to the requested cancellation.

In doing so, however, we wish to extend our very deep appreciation to you for the cooperation and courtesy tendered to us and to our counsel, Mr. Harvey.

We trust this letter will suffice for the purpose of our withdrawal and would appreciate your acknowledgment of it as such.

III

LEGAL QUESTION

The withdrawal of the buyer's protest eliminates much of the problem of the case, but the producer's obligation to continue service remains, by operation of the Natural Gas Act, until there issues the Commission order requested. Under Section 7(b), 15 U.S.C. 717 f(b), such an order requires a finding either that the gas supply is depleted (not here involved) or else "that the present or future public convenience or necessity permit such abandonment." (Note the statutory finding is not quite like the similar one needed for the original certification of a proposed sale of gas, under Section 7(e), where, for such a license, the Commission must find that the sale will be "required" [not permitted] by the public convenience "and" [not or] necessity.)

Accordingly, while it is not herein found that the public interest *requires* the action sought, it is found below that the abandonment requested will not militate against the public interest, under the circumstances and subject to the condition included in the order subjoined.

IV

PRODUCER DATA

The applicant here is a partnership described as "Louis Fabian, Charles L. Reed, John M. Lord, *et al.*" of Minneapolis. Four years ago this group succeeded to the oil and gas leases on the Mayme Golden or Golden acreage in Ritchie County, West Virginia, and took over the sale of gas being made therefrom under a 1952 contract between the Oxbow Oil and Gas Company, as producer, and the "Penova Interests" as the buyer. In the next year, 1963, the Fabian producers also signed with the same buyer a separate contract covering a part of the same acreage, and the producer's present application covers the delivery programs described in both contracts. Both sales contracts were for a year-to-year term, subject to cancellation 90 days before the end of any year, and both were "canceled", or rather terminated, in writing in November 1964, to be effective March 1, 1965. However, the actual delivery and sale have continued to date, not under the contract but in the light of the continued service obligation imposed by Section 7 of the Natural Gas Act.

The Messrs. Fabian, *et al.*, sell for 19 cents per Mcf, in an area where the Commission's guideline rate or ceiling applicable is 25 cents (FPC Regulations, Section 2.56). Twenty-five cents is the "going" rate paid by the largest pipeline buyer, the Consolidated Gas Supply Corporation, for gas brought out to their lines, and that is the rate which the Fabians' buyer (Penova Interests) receives from Consolidated. Hence the contest here is, or was, whether the intermediate buyer should continue to receive the 6-cent margin between 19 cents and 25 cents, or whether the producer should earn and receive the full amount himself.

The amount in issue is not large because the five wells now on the lease produce only 16,069 Mcf per year (T15), so the Fabians' gross sale is $3,053 and Penova's resale price is about $4,000, and the net question is whether the Fabians should continue to sell to Penova for a little over $3,000 per year or should be permitted to abandon the sale in order that they can qualify for and effect a sale to Consolidated for about $4,000.

Apparently unaware of the incidence of the Federal law, the Fabians, after serving notice of the termination of their sales contract, proceeded to construct a pipeline for the one and one-eighth mile distance out to the Consolidated Gas Supply Corporation line, at a cost of $6,285 for a two-inch line (T63). It was built in anticipation of the present sale termination and of a new sale direct to Consolidated. It then came to attention that an order such as here applied for would first be necessary. Indeed, it seems then to have been learned for the first time that the producer needs a certificate of public convenience and necessity to make his sale in interstate commerce, but no such certificate has yet been applied for or issued to the producers. (This hiatus does not debar consideration of their abandonment petition, *J. M. Huber Corp.* v. *F.P.C.*, 236 F. 2d 550 (CA3–1956).

At first, there was some talk that economic necessity moves the producer to seek this relief, because the return on the investment is not a reasonable one and it amounts to an undue economic hardship. It turns out they do not mean it is a loss operation, and it was noted further that the producer has not chosen to file and collect an increased price, though free to do so for over a year now, subject of course to suspension here and establishment of its fairness. *United Gas Pipe Line Company* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103, 112; *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 364 U.S. 137, 155 (1960). In that circumstance, and with such a limited ground asserted for relief, further inquiry into the actual cost of service was cut off at the hearing. *Pacific Northwest Pipeline Corp.* (1959), 22 FPC 1091, affirmed, *California* v. *F.P.C.*, 296 F. 2d 348 (CADC–1961), rev. on other grounds, 369 U.S. 482 (1962).

As a matter of fact, the more pertinent representation by the producer was that the lease has a number of drilling sites available, at least ten, and their development is not an attractive prospect at 19 cents but would be promising at 25 cents. Upon this potential of production for the public and consumer benefit, the affirmative case rests. (Brief, page 7).

V

INTERMEDIATE BUYER DATA

The buyer from the Fabians is a joint enterprise run by four trustees, under the cognomen, "Penova Interests". They operate a 90-mile transmission or perhaps gathering system of two- to four-inch lines, which brings the gas from the well of 61 producers and from some of their own, all of which they sell at five delivery points to the Consolidated Gas Supply Corporation. Their certificate issued in 1955, 14 FPC 1210, and their flat 25-cent sales rate (FPC Rate Schedule No. 1) is not so much what they elect to charge but what Consolidated elects to pay. The Fabian production amounts to a little over three percent of Penova's total business. Penova has been in this sort of business since 1926; their lines have long since been paid for and are 85 percent written off.

In their written protests and at the hearing, Penova raised the defense that their six-cent margin is little enough, all things considered, and the loss of even one account is naturally unwelcome. Their real apprehension was much broader—as word of this case gets around, their other substantial producers, such as those who furnish Penova as much as 100 Mcf per day, may seek to emulate the Fabians and build to the Consolidated pipeline on their own. This invidious trend might make Penova's remaining volume so much lower as to endanger and make infeasible their entire operation, with the fell result that the larger number of very small operators would be left with their modest wells and no market at all, a consummation unattractive to them as well as to the consuming public (but one not unknown to Appalachia, see *Medina Gathering Corp.*, 30 FPC 227, 244).

The defense so drawn would plainly be relevant and at least entitled to be weighed, but it fell apart for entire lack of proof or even of data from which such inferences could be drawn. Every opportunity was afforded—the Penova trustees appearing in *propria persona*—for evidence to be collected and submitted after the hearing. Instead, there arrived the quoted letter of April 1, which appears to withdraw the defense and the protest, if not the aggrievement of adversity. For the result is the abandonment will shift this much of the margin or price differential from the buyer to the producer; what further consequence this may bring cannot be foretold from this record.

VI

PIPELINE DATA

All of the gas production here involved is resold by Penova to the Consolidated Gas Supply Corporation (formerly Hope Natural), whose service includes a considerable proportion of sales in interstate commerce, see *Hope Natural Gas Company* v. *F.P.C.*, 320 U.S. 591. None of the parties seemed to be able to advise the forum as to the interstate or intrastate destination of the Fabian gas, and the certificate issued some years ago to Penova for their sale to *Hope*, 14 FPC 1210, is not very probative because it was issued on an application of September 27, 1954, which was made under protest and in challenge of the jurisdiction of FPC. However, from the record of another and recent case pertaining to the Consolidated system,[1] it was ascertained and stipulated at the hearing that the gas taken into the Consolidated line in this county in West Virginia is indeed conveyed and sold interstate, which establishes the question of Federal jurisdiction.

Consolidated is the dominant buyer in the region, and the applicant here testified that Consolidated has confirmed to him that they stand ready to buy his gas as soon as the permit so to do issues from the Federal Power Commission. The producer already has laid his line out to the Consolidated pipeline, and it is Mr. Fabian's representation that as soon as the abandonment order here issues he will seek permission to sell the gas to Hope (Consolidated) directly (T43). In other words, it is not a case of an abandonment which will affect the ultimate consumers, who will continue to receive the same gas at the same cost, 25 cents, which is apparently the pipeline's standard price and is also the Commission's guideline ceiling.

VII

INTEREST OF THE PARTIES

The "public convenience or necessity" which may or may not *permit* an abandonment includes the interest of the immediate parties as well as that of the consumers and indeed of the public generally. So far as the applicant-producer is concerned, this interest is obvious since the direct sale to Consolidated will increase his revenues from roughly $3,000 to $4,000 per year even without additional drilling. This means it will take more than six years for this increment to recover the cost of the new line to Consolidated, which tends to confirm the understanding that additional drilling and possible increased sales are in prospect. The betterment to the Fabians means an equal detriment to Penova, but they were free to protect themselves by a longer term contract if thought necessary. Penova's lines were evidently built in reliance upon their use in this business, but they have now been paid for and practically all written off, hence no reason now remains to require the producer to continue to share his business with them and to continue to accept a lower price than other producers are collecting who sell direct to Consolidated, when the circumstances are such that the producer is able, as a practical matter, to avoid the intermediate sale to the middleman. The third party in the case is Consolidated Gas, which was not here and as to which no difference of consequence is perceived. (This is the converse of *Shrewsbury Municipal Light Department* v. *New England Power Co.*, 32 FPC 373.)

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[1] *Hope Natural Gas Company*, 33 FPC 150, affirmed *sub nom. Cities of Canton, et al.* v. *F.P.C.*, 360 F. 2d 521 (CADC–1966).

VIII

THE PUBLIC INTEREST

In a similar matter, the Commission permitted a producer's sale to be abandoned since the supply was being replaced otherwise, and the pipeline would "receive no less gas because of the abandonment." *Northern Natural Gas Co.*, 22 FPC 164, 170 (1959). The entire presentation here was upon the basis that the producer wants his gas to continue to go to Consolidated, has already built the line to make that sale, and stands ready to begin as soon as he gets a contract from Consolidated and a certificate from FPC, the gas to continue to come in to Consolidated's lines at the same price as at present. In that circumstance, the public interest and "convenience or necessity" do not militate against the abandonment, assuming the new sale begins at the same time, and in that sense it is concluded that the public convenience or necessity permit the abandonment to take place. This conclusion is buttressed by the evidence or at least substantial indication that the abandonment and new sale will motivate, indeed energize additional drilling, which makes promising the prospect of delivery for public consumption of a possibly larger volume than at present.

Accordingly, it remains only to fashion the order in such a way as to authorize the abandonment but to make it effective at the moment when, but only when, the new sale begins so that there will be no actual interruption of service.

FINDINGS AND ORDER

Based upon the record herein and the other materials noted above, it is hereby found and determined that the Fabian, *et al.*, partnership comprises a natural-gas company, whose sale of natural gas in interstate commerce for resale is subject to the jurisdiction of the Commission and is subject to both the certificate and the abandonment provisions of Section 7 of the Natural Gas Act; further, it is found that the abandonment of that sale, pursuant to the condition outlined below, is permitted by the public convenience or necessity.

ACCORDINGLY, SUBJECT TO REVIEW BY THE COMMISSION, *It is ordered*, That—

(A) Subject to (B) below, the partnership of Louis Fabian, Charles L. Reed, John M. Lord, and Others is hereby authorized to abandon and cease their sale of natural gas from the Mayme Golden lease in Ritchie County, West Virginia, to the Penova Interests, as described in the application filed in Docket CI66-16 and as set forth above, and to abandon any facilities used to make that sale.

(B) This order and permit become effective when and only when there

(1) the producer's completion of arrangements with the Consolidated Gas Supply Corporation for the sale of the same quantity of gas to Consolidated; Consolidated;

(2) the issue by Federal Power Commission, upon application to be filed by the Fabians, of a certificate of public convenience and necessity authorizing such a sale and the construction and operation of any facilities necessary to deliver the gas to Consolidated and effect the sale; and

(3) the actual commencement of delivery and service under that sale.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

DECLARATORY ORDER WITH RESPECT TO PROPOSED ADJUSTMENTS IN QUALITY STATEMENTS

(Issued June 13, 1966)

As provided in paragraph (F)(1) of Opinion No. 468, as amended, the producers listed in Appendices B, C and D have submitted quality statements reflecting the quality of gas under rate schedules pertaining to sales of gas in the Permian Basin Area and the price adjustments they have agreed to with their pipeline purchasers where the gas deviates from pipeline quality. The time period for filing these quality statements was extended to March 21, 1966, by the Tenth Circuit in its stay order issued January 20, 1966, in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) A similar extension was granted by the Commission to any producer which had not obtained a court stay by order issued February 11, 1966, 35 FPC 211. The Commission by order issued April 29, 1966, 35 FPC 639, also extended the time to June 30, 1966, for its consideration of those quality statements submitted prior to the date of issuance of that order which reflected agreement between the producer and purchaser.

Under Opinion Nos. 468 and 468-A 34 FPC 159, 1068 the burden of making the initial determination of the appropriate price adjustments for deviations from pipeline quality gas was placed upon the producers and pipeline purchasers, subject to Commission approval. It was made clear in Opinion No. 468-A that normally agreements between the seller and buyer as to the proper amount of the quality adjustment which reflected a good faith effort to approximate the costs would be accepted. It was also pointed out that average costs might be utilized where cost data was not readily available for individual contracts.

There is no need to discuss here the different methods utilized by the three major pipeline purchasers in Permian (El Paso, Northern Natural and Transwestern) in the determination of the proper adjustments for their respective purchases which have been agreed to by the producers. These methods and the resulting unit costs of each pipeline for treating, dehydration and compression are set forth in Appendix A.

We conclude after careful review that the various methods reflect a good faith effort to approximate the costs involved and represent practical solutions to the variety of problems encountered by the different parties. We shall therefore approve the use of these methods, with the single exception discussed below relating to Northern Natural's use of a 90% annual capacity factor.

The quality statements set forth in Appendix B will also be accepted. They reflect either the sale of pipeline quality gas or appropriate agreed upon price adjustments utilizing the methods described in Appendix A where the sale of gas deviates from pipeline quality.

In computing treating, dehydration and compression costs, El Paso obtained the unit costs by dividing the total computed cost by the full annual rated capacity (100% annual capacity factor) of its plants or facilities. Transwestern also used the full annual capacity in computing its treating and dehydration costs whereas Northern Natural used a 90% annual capacity factor.[1]

The use of a 100% capacity factor by El Paso and Transwestern reflects their determination not to impose upon producers selling gas to them the cost attributable to the reserve or peaking capacity of their facilities. Such an approach is justifiable, we think, because the reserve capacity is intended for use in connection with future purchases of gas and for meeting peak loads of consumers.

In view of our acceptance of the 100% capacity factor for sales to El Paso and Transwestern, we shall also permit Northern Natural to utilize a 100% capacity factor. While Northern Natural has reached agreement with some of its producers on a 90% capacity factor level, other producers are contending that the 100% figure should be utilized, and it is our understanding Northern Natural would be agreeable to applying the higher figure to all producers. Use of a 100% load factor by all purchasers in the area would not only be beneficial to the producers involved but would place Northern Natural in a more equitable and competitive position in the area with respect to purchases of new gas. The effect, moreover, on the producer sales covered in Appendix C would be to reduce Northern Natural's overall cost applicable to purchased gas by an estimated $70,000 annually.[2] In these circumstances we will permit the producers listed in Appendix C[3] to submit new quality statements reflecting such lower costs.

The quality statements listed in Appendix D are acceptable except for the proposed upward adjustments for gas delivered at pressures in excess of 500 psig or for Btu content between 1000 and 1050. These adjustments are proposed to offset downward adjustments. As we have previously indicated, such upward adjustments are not permissible under our Permian Opinion.[4] We shall therefore require the producers in Appendix D to submit new quality statements reflecting the same adjustments utilized in the present quality statements, except for the improper upward adjustments.

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[1] The approximate actual average annual capacity factor for treating plants in 1964 was 75% for El Paso and in the 70–80% range for Transwestern. Northern's various facilities had actual annual capacity factors ranging from 40% to 86%.

[2] The cost differential between 90% and 100% capacity factor for those producer sales where the producer and Northern Natural have not been able to agree on the appropriate price adjustment is an estimated $270,000 annually. Of the total $340,000 estimated reduction in cost, only an estimated $240,000 will be effective at this time because the contract rates of certain producers are below the applicable area rate.

[3] Appendix C covers only those producers selling gas that deviates from pipeline quality to Northern Natural which submitted quality statements reflecting agreement as to the appropriate price adjustment.

[4] Order issued March 23, 1966, in Area Rate Proceeding, Docket No. AR61–1 (*Phillips Petroleum Company*, Docket No. G–20405, 35 FPC 411).

The Commission orders:

(A) The quality statements listed in Appendix B are accepted.

(B) The quality statements listed in Appendix C are accepted, but the producers listed in that appendix may submit a new quality statement for each sale covered there within 30 days of the date of issuance of this order reflecting the treating, dehydration and compression costs of Northern Natural computed on the basis of a 100% capacity factor. Such quality statements shall comply with the requirements of paragraph (F)(1) of Opinion No. 468, as amended.

(C) The quality statements listed in Appendix D are accepted, except insofar as upward adjustments are proposed for gas delivered at pressures in excess of 500 psig or for Btu content between 1000 and 1050. The quality statements insofar as they propose such upward adjustments are rejected.

(D) The producers listed in Appendix D shall submit within 30 days of the date of issuance of this order a new quality statement for each sale covered there reflecting the same adjustments utilized in the present quality statement, except for the rejected upward adjustments described in paragraph (C) above. Such quality statements shall comply with the requirements of paragraph (F)(1) of Opinion No. 468, as amended.

(E) Any producer filing a new quality statement as provided in paragraphs (B) and (D) above shall also file a new refund report within 45 days of the date of issuance of this order to reflect any changes that may be necessary if the sale relating to such new quality statement is involved in a Section 4(e) suspension proceeding consolidated in Opinion No. 468. Such refund report shall comply with the provisions of paragraph (I) of Opinion No. 468.

Commissioner O'Connor noted his prior dissent to the treatment of the 50-Btu "gap" here, and re-emphasized the possibility, as he previously noted, of further adjustments in quality statements should revenue requirements equating to costs necessitate this; therefore, he would take no action on this matter pending judicial review and further analysis of the cost impact.

APPENDIX A

Table of treating, dehydration and compression charges

El Paso		Transwestern		Northern	
TREATING ACID GAS					
System Average	0.56982¢ (1% acid)	Bell Lake	1.22¢	Hobbs	0.58¢
Terrell Plant	1.07877¢ (48% acid)	Puckett	2.51¢	Mitchell:	
Wassom Plant	.51575¢ (2.85% acid)	Keystone	.70¢	Northern	4.63¢
McElroy-Crane	.77346¢ (6.77% acid)	Walton	.65¢	Phillip	2.51¢
		Estes	.85¢	Jasper	.13¢
		Kermit	.52¢	Kermit	.14¢
DEHYDRATION					
System average	.10¢	System average	.20¢	Spraberry	.15¢
				Plymouth	.27¢
				Andrews	.16¢
				El Dorado	.09¢
				Mitchell	(1)
				Hobbs	.24¢
COMPRESSION					
Permian System				*Lea County System*	
100–500	1.81¢	None required to be performed for 500 pounds standard.		100–500	1.90¢
40–500	2.79¢			Plymouth 40–500	4.73¢
200–500	1.04¢			Andrews 40–500	2.54¢
300–500	.55¢			Spraberry 40–500	2.89¢
400–500	.26¢			Hulldale 225–500	.93¢
				Eunice 50–500	1.86¢

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[1] Combined with CO_2 removal.

APPENDIX A—PART I

El Paso's Method of Costing for Quality and Delivery Pressure Deficiencies

Treating Cost for Sour Gas

El Paso prepared one cost of service for treating acid gas (gas containing H_2S and CO_2) based upon the combined costs of ten of its plants in the Permian Basin Area where the CO_2 content of the gas being processed was less than 3% (the allowable CO_2 content specified in Opinion No. 468). It also prepared separate costs of service for treating for each of three other plants in the Permian Basin where the CO_2 content exceeds the 3% allowed by Opinion 468.

The average plant investment used for determination of treating costs for the test year 1964 consisted of the functionalized investment for treating facilities as recorded in El Paso's books, plus some allocation of general plant. The average reserve for depreciation and depreciation expense were similarly determined. Working Capital included in the rate base was computed at 2% of Average Gross Plant Investment. Return on the rate base was computed at 6.125%, which was the rate of return allowed El Paso in settlement of its last rate case.

Operation and maintenance expenses and depreciation expense for the treating functions and field dehydration plants were taken directly from El Paso's records. Allocable Administrative and General expenses (A & G) were allocated on the basis of the ratio of: A & G labor to total labor; A & G Gas plant (excluding intangible and general plant) to total plant; and A & G functional operating expenses to total functional operating expenses.

Federal Income Tax was computed on the 48% corporate rate basis. Other taxes such as property taxes and franchise taxes were allocated on the basis of average gross plant investment. "Other revenues" were credited to the cost of service.

For two of the plants treating high CO_2 gas (content above 3% by volume) El Paso deducted the average treating costs above a 3% CO_2 content from all gas going into the plant containing CO_2 in excess of 3% CO_2 and no charges were made against gas having less than 3% CO_2.

Where dehydration is performed within the plant, the costs of dehydration were considered as part of acid gas treating costs and no separate costs or quality deductions for dehydration were made in these instances.

In order to obtain dehydration costs where dehydration is performed as a separate function, El Paso computed a cost of service for the year 1964 based on its dehydration plants in the Permian Basin Area. The same methods and rate of return used in computing the cost of service for treating were used in determining the cost of service for dehydration. Here again El Paso used the installed rated capacity of the facilities (use of a 100% annual capacity factor) to get a unit cost.

Compression Costs

To obtain a unit cost for compression, El Paso prepared a cost of service for 1964 based upon its field compression plants in the Permian Basin using the same methods and rate of return as was used in developing the treating costs.

The unit cost for compression was obtained by dividing the total costs by the average installed rated horsepower converted to brake horsepower hours available on an actual operating exeprience basis. The result was a unit cost per brake horsepower of 0.60¢.

Using a brake horsepower vs. delivery pressure curve for delivery pressures up to 500 psig, El Paso then computed delivery differentials from 50 to 500 lbs. on the basis of 25 lb. intervals and from 30 to 50 lbs. on 10 lb. intervals.

Method of Application of Deductive Charges for Quality and Delivery Pressure Deficiencies

Acid Gas Deductions (Sulphur and Carbon Dioxide)

For gas being processed through its Wasson and McElroy-Crane Plants, El Paso and the producers agreed to apply the unit cost of treating quality deficient acid gas as computed for each particular plant to the quality statement for the rate schedules involved.

For gas being processed through El Paso's complex of ten treating plants in the Permian Basin and its Terrell County Plant, deductive charges for sour gas and CO_2 gas computed on a basis of the average cost of treating 1% acid gas content, have been applied to the quality statements for the rate schedules involved on the basis of the degree of sourness (or CO_2 content in the case of the Terrell County Plant).

The standards announced in the Commission's Opinion were 10 grains of H_2S and 200 grains per Mcf of total sulphur and 3% carbon dioxide and unless the gas under a particular rate schedule exceeds one or the other of these standards, no deductive charges have been applied. El Paso and the producers have applied the deductions for sour gas on the basis of the total sulphur content having found that the relationship between H_2S content and total sulphur content were practically the same. However, if the total sulphur content exceeded 10 grains per Mcf but did not exceed 200 grains, a deductive charge was applied only if the H_2S content did exceed 10 grains.

The deductive charges were applied by first determining the sourness of the gas on the basis of the ratio of the measured grains of total sulphur content per Mcf to 6350 grains per Mcf of total sulphur content, the latter representing 1% sour gas by volume. Then the ratio was applied to the unit cost of treating the gas without accounting for shrinkage and fuel. The shrinkage and fuel charge was determined as a percentage of the area price or value of gas. Thus, a 1% sour gas would have a 1% by volume shrinkage. From the operation of the treating plants, the ratio of fuel volumes to shrinkage volumes was known (fuel is 69.43% of shrinkage volumes for El Paso's ten plant grouping). Accordingly, 1% sour gas would have a 1.69% fuel and shrinkage charge and this 1.69% factor was applied to the area base rate (16.5¢ for new gas, Texas and 14.5¢ for flowing gas, Texas) less the treating charge before fuel and shrinkage. If an upward Btu adjustment (above 1050) was applied to the gas, then no shrinkage charge was made but only a fuel charge was added since the Btu adjustment was applied on the basis of Btu content before treatment (but after liquid hydrocarbon removal) and the shrinkage is offset by the gain in Btu content.

Dehydration

El Paso's average unit cost of dehydration (0.10¢ per Mcf), was applied as a deductive charge to all gas containing more than 0.009 lbs. of water per Mcf if dehydration was performed and if it was performed separately from treating. There were some instances where gas contained more than 0.009 lbs. of water where dehydration was not performed because the gas was co-mingled with a stream that had a composite of less than 0.009 lbs. of water per Mcf.

Delivery Pressure

El Paso's computed costs of average system compression for 25 lb. intervals below the standard of 500 lbs. down to 50 lbs. with computed charge also for 40 and 30 lbs. were applied to the actual delivery pressure under each particular rate schedule. Generally, the charge was made for the nearest 25 lb. pressure interval but interpolation between intervals was used in some cases (usually for lower pressure such as 45 lbs.)

For gas delivered to El Paso at less than 500 lbs. but available at 500 lbs. or above, no deduction for delivery pressure was made in accordance with Opinion No. 468.

Btu Adjustment

In accordance with Opinion No. 468, an upward Btu price adjustment for gas having Btu content above 1050 was applied on the ratio of:

$$\frac{\text{actual Btu content of gas/cu. ft. above 1050}}{\text{1050 Btu}}$$

APPENDIX A—PART II

Transwestern's Method of Costing for Quality Deficiency Deductions

Transwestern determined its quality deduction charges on the basis of a cost of service for each of its treating plants and on the basis of the average of all its field (wellhead) dehydration facilities for dehydration service performed outside its plants. The cost of service computations were generally prepared consistent with the usual staff method of constructing a cost of service.

The rate base for each plant and for the field dehydration facilities consists of the 1964: (1) Average net investment in plant as recorded on Transwestern's books, (2) Average material and supplies, (3) 45 days (1/8) cash operating and maintenance expenses, (4) less the average of accrued Federal Income Taxes (44%), and (5) less a deduction for interest expense and amortization of debt discount expense available for income tax purposes but not properly chargeable for cost of service purposes (3.7% of plant). The return on rate base was computed on the basis of 6.67% which is the same as the rate of return used by Transwestern in the Gulf Pacific case and utilized by the staff in recent pipeline matters involving Transwestern.

Fuel costs included in the various cost of service computations were based on fuel consumption metered at the plant and valued at the base area rate without adjustment for deviations from the pipeline quality standards prescribed in Opinion Nos. 468 and 468-A.

Direct operating and maintenance expenses were 1964 costs, per books, plus some minor added costs to compensate for known changes in 1965 attributable to adjustments in the capacity of the plants which necessitated additional expenses for labor, chemicals or other related supplies. Indirect expenses allocated to operating and maintenance expenses consisted of expenses associated with the operation of the company's District V and Division II offices. These latter expenses were allocated on the ratio of their total to the total direct labor costs of each of the facilities served by those offices.

The depreciation expense provision for the year was based on a rate of 3.5% of the depreciable plant gross investment at January 1, 1965. Since the plants were constructed in late 1960 or 1961 the depreciation reserve runs around 12% to 14% at the beginning of 1965.

Expenses included as Administrative and General in each cost of service computation consist of direct charges for property insurance per books, and charges of 2% of total labor for injuries and damages and 9% of total labor for employee pensions and benefits.

Each cost of service computation includes a category identified as Taxes Other—which is comprised of Actual 1954 Ad Valorem Taxes (per books adjusted where appropriate for known additions to plant in 1965) and payroll taxes (FICA and unemployment) provided for on the basis of 3% of labor.

The Allowance for Federal Income Tax included in each cost of service was computed by starting with the return on rate base (6.67% of average net plant investment plus gross working capital, before tax accrual adjustment less 3.7% of gross plant in service January 1, 1965). (This represents a taxable income deduction for interest expense, amortization of debt and discounts available for tax purposes but not available for cost of service purposes). The figure thus determined, which represents taxable income after tax deductions, was then multiplied by 92.308% (48% corporate tax rate converted (49%÷52%=92.308%) to obtain the Federal Income Tax claimed).

Unit costs were determined for each plant and facility on the basis of the total computed costs divided by the design capacity (100% annual capacity factor) of the plant or facility. However, Transwestern advises that although during peaking periods some plants may run at 100% capacity for the year the average load factor would be between 70 and 80%.

Transwestern applied the derived unit cost of treating for a particular plant to the volumes of gas under a particular rate schedule going through such plant without regard to the degree of sourness of the gas. Transwestern had only one plant for removal of excessive carbon dioxide and the removal charge is computed on the full rated capacity volumes and applied under the one rate schedule involved. For gas having excessive water, Transwestern applied its average field dehydration charge of 0.2¢ per Mcf. No compression charges were needed or applied for Permian Basin sales to Transwestern.

APPENDIX A—PART III

Northern's Method of Costing for Quality and Delivery Pressures

Most all of Northern's plants and related facilities in the Permian Basin (Kermit Plant was built in late 1963 and 1964) were built in 1953 and therefore at the close of 1964 were about 45% depreciated. However, Northern, with the idea that the costs they were determining would pertain for some time, decided that for this purpose they would consider that their plants and facilities were 50% depreciated and computed their rate base and return on rate base on that premise. The average investment in material and supplies inventory for each facility plus an allocated portion of such items from area warehouses were included in their rate base determination. The portion of General Plant included in their rate base was determined by allocating total General Plant between all Permian Basin treating, dehydration and compression facilities and all its other system facilities on the basis of the ratio of such investment to plant investment and then further allocating the amount allocated to the Permian Basin facilities comprising the Permian Basin plant and facilities. To the composite investment, plus an allowance for 45 days (1/8) working capital Northern applied a rate of return of 6.5% which is the rate that has been used in rate and certificate matters involving Northern.

For its Federal Income Tax Allowance, Northern multiplied its computed return allowance less a deduction of 4.4% of 54 percent debt on plant, by 92.308% (48% corporate tax rate). (Return=52%, Taxes=48%, 48%÷52% =92.308%).

The operating expenses included in its computation of costs consisted of direct labor, supplies and expenses, fuel, Supervision and Administrative General expenses. Fuel charges, where applicable, were based upon metered volumes at the respective facilities priced at the average price Northern paid for gas at each respective facility in 1964 adjusted for deviations from Opinion Nos. 468 and 468-A quality standards. Supervision and Administrative and General expenses directly related to its Permian Basin facilities involved in treating cost determinations were selected by review and selection of those expense accounts which were applicable to such facilities and then allocating them on the basis of the ratios of such selected expenses to the direct labor expenses of the respective facilities. These supervision and A & G expenses represent part of district and home office expenses.

The current provision for depreciation was computed on the basis of 4 to 4½% of plant investment.

Taxes other than income taxes primarily consisted of ad valorem taxes for each facility recorded on Northern's books for 1964. Some taxes, minor in amount, were also included.

In determining its unit costs Northern divided its total computed cost for the respective facilities by 90% of the facilities design capacity.

Northern also advised that its costs were taken from their books as recorded for 1964 which was the latest complete year available at the time their determinations were made and that they made no attempt to normalize or include any items or allowance for 1965 changes.

Northern determined separate charges for treating sour gas, CO_2 removal, dehydration, or compression where more than one of these functions was performed in a facility.

As stated, Northern applied treating and compression costs in accordance with the percentage of volumes of gas under a particular rate schedule needing treating or compression. Thus, if 70% of the gas was sour, the plant unit cost of 0.58¢ for treating sour gas was reduced to 70% or 0.40¢ per Mcf. Dehydration costs were applied to the full stream volume, if the gas required dehydration.

APPENDIX B

1. *Sales to El Paso Natural Gas Company*

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Amerada Petroleum Corporation	3	[1]9	Ashland Oil & Refining Company.	**44	3
	4	13			
	27	9	Aztec Oil & Gas Company	20	[1]1
	32	[1]5	The British-American Oil Producing Company.	4	8
	33	[1]5		5	6
	34	[1]7		14	6
	35	[1]7	Cabot Corporation (SW)	22	[1]9
	36	[1]7		23	8
	37	[1]8		50	4
	38	[1]6	Champlin Petroleum Company	50	9
	39	[1]4	Cities Service Oil Company	38	[1]7
	**40	[1]5		39	[1]9
	47	[1]4		40	[1]13
	62	11		41	[1]6
	68	[1]5		43	10
	69	(2)		57	[1]4
	72	8		58	[1]6
	120	4		59	[1]6
	124	7		60	[1]6
Atlantic Richfield Company	*10	8		61	[1]5
	12	[1]6		62	[1]5
	13	[1]9		63	[1]6
	26	10		64	[1]6
	28	30		65	[1]6
	62	[1]12		66	[1]5
	**132	[1]5		203	[1]5
	168	[1]5		205	[1]5
	193	[1]11	Continental Oil Company	5	[1]8
	208	7		7	[1]14
	240	6		146	8
	245	7		*168	5
	275	4		**216	[1]12

APPENDIX B—continued

1. *Sales to El Paso Natural Gas Company*—Continued

Producer	Rate schedule No.	Supplement No.
Continental Oil Company—Con.	**217	[1]11
	230	[1]2
	252	7
	253	8
	272	[1]8
Dorchester Gas Producing Company.	*3	5
Forest Oil Corporation	5	6
Getty Oil Company	1	10
	2	[1]7
	6	[1]2
Gulf Oil Corporation	13	10
	**58	[1]5
	**59	[1]5
	**60	[1]4
	**61	(2)
	**62	(2)
	63	[1]29
	64	[1]6
	65	10
	120	9
	143	5
	259	3
Humble Oil & Refining Company.	3	[1]13
	**5	60
	16	14
	77	[1]12
	92	[1]12
	**93	[1]8
	94	[1]8
	96	[1]7
	97	[1]7
	**142	8
	**287	[1]4
	288	9
	289	9
	290	8
	291	19
	292	18
	293	19
	**294	2
	302	17
	320	14
	353	4
	358	4
	361	4
	368	[1]2
	374	6
Caroline Hunt Sands	***4	[1]3
Hunt	1	10
	3	[1]7
	4	[1]5
	5	6
N. B. Hunt	1	10
	4	[1]5
	5	[1]7
	9	6
Hunt Oil Company	7	11
W. H. Hunt	1	10
	4	[1]5
	5	[1]7
	6	6
Marathon Oil Company	5	8
	**7	6
Midwest Oil Corporation	4	7
	17	4
	32	1
Monsanto Company	5	10
	12	7
Murphy Oil Corporation	11	11
Northwest Production Corporation.	*2	9
The Nueces Company	*3	11
Odessa Natural Gasoline Company.	1	6
Pan American Petroleum Corporation.	**5	8
	17	[1]12
	*18	12
	*23	15
	115	[1]16
	129	35
	133	9
	168	[1]20
	*313	10
	316	9
Pecos Company	***1	9
	*2	11
	3	10
Phillips Petroleum Company	46	[1]7
	66	9
	151	9
	**256	7
	258	[1]6
	315	4
	338	4
	*359	16
	*406	2
	*410	1
Pioneer Production Corporation	***13	3
Robinson Bros., Oil Producers	1	3
Samedan Oil Corporation	**2	7
	10	2
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company.	14	13
	15	8
	17	8
	18	[1]5
	29	[1]5
	**39	[1]5
	**45	[1]8
	**46	[1]19
	47	[1]7
	48	[1]13
	49	[1]9
	**50	6
	**51	[1]27
	**52	[1]9
	53	[1]10
	54	[1]8
	55	[1]8
	**61	[1]7
	62	[1]4
	**64	[1]12
	65	4
	70	[1]4
	71	[1]3
	75	[1]3
Shell Oil Company	**20	15
	32	[1]8
	122	[1]12
	142	8
	272	[1]5
	302	[1]4
	304	[1]10
	313	[1]4
	*315	3
Sinclair Oil & Gas Company	7	14
	28	7
	70	[1]7
	*145	7
	148	[1]18
	153	[1]21
	163	[1]6
	266	[1]7
	**271	[1]7
	**274	[1]7
	275	[1]24
	**277	[1]6
	**298	9
Skelly Oil Company	**66	[1]6
	**68	[1]14
	70	[1]9
	74	5
	77	9
	**187	6
	205	1
Socony Mobil Oil Company, Inc.	**20	21
	*26	15
	*48	[4]22

APPENDIX B—continued

1. *Sales to El Paso Natural Gas Company*—Continued

Producer	Rate schedule No.	Supplement No.
Socony Mobil Oil Company, Inc—Continued	76	10
	102	12
	103	13
	119	6
	133	6
	175	4
	235	[1]4
	257	6
	280	8
	308	7
	336	3
	341	7
	346	7
	347	7
	**348	19
	**349	7
	**350	11
	351	14
	353	7
	**368	[illegible]
	**379	14
	384	15
Sohio Petroleum Company	**45	38
	**73	7
	74	10
	***77	12
	***78	14
	***79	12
	***80	12
	***81	14
	***82	13
	***83	15
	***84	13
	**91	21
	94	18
	***95	18
Standard Oil Company of Texas, a Division of Chevron Oil Company.	3	[1]12
	4	[1]5
	*7	11
	8	11
	13	2
	35	5
Sun Oil Company	59	6
	**80	[1]13
	143	3
	174	4
Sunray DX Oil Company	81	15
	92	9
	94	10
	101	8
	149	5
	156	[1]9
	231	3
The Superior Oil Company	9	12
	30	20
Tenneco Oil Company	**25	4
	41	3
	116	4
	156	[1]10
Texaco Inc	17	13
	18	11
	31	8
	36	[1]13
	37	[1]6
	175	[1]4
	176	[1]4
	177	[1]4
	178	[1]4
	269	[1]7
	271	7
	291	19
	293	5
	294	5
	314	[1]9
	**328	2
	349	1
Tidewater Oil Company	17	17
	42	[1]11
	50	13
	83	[1]8
	138	1
Union Oil Company of California	10	10
	11	9
	34	[1]3
	70	4
	71	4
	**72	31
	73	21
	107	[1]5
	108	13
	130	4
	154	4
Union Texas Petroleum, a Division of Allied Chemical Corporation.	*12	10
	***25	14
	**27	[1]8
	**29	[1]8
	30	8
	**52	10
	64	17
	75	[1]7
	79	[1]5
	81	[1]4
Warren Petroleum Corporation	22	11
	*30	8
	42	13
	*43	13
	*44	7
	45	7
	54	3

APPENDIX B

2. *Sales to Northern Natural Gas Company*

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Atlantic Richfield Company	183	2	Shell Oil Company	151	4
	191	4		*221	5
	207	4		*283	6
	255	3		311	2
	286	3	Sinclair Oil & Gas Company	136	2
	***294	5		166	4
Cabot Corporation (SW)	37	3		*317	6
Humble Oil & Refining Company.	365	2	Skelly Oil Company	*73	8
	375	1		89	5
			Standard Oil Company of Texas, a Division of Chevron Oil Company.	33	1
Marathon Oil Company	[3] **82	3		203	4
Pan American Petroleum Corporation.	*315	6		*323	1
	321	1	Texaco Inc.	335	1
	328	1		336	1
	418	1			
Pioneer Production Corporation	2	2	Texas American Oil Company	**2	1
Placid Oil Company	13	3	Tidewater Oil Company	116	1
			Union Oil Company of California	29	2
			Warren Petroleum Corporation	52	1

APPENDIX B

3. *Sales to Transwestern Pipeline Company*

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Continental Oil Company	*177	5	Monsanto Company	39	3
	*178	5	Texaco Inc.	232	2
Gulf Oil Corporation	**193	19	Marathon Oil Company	79	[5] 5
	**296	2			

FOOTNOTES

*Operator.

**Operator, et al.

***Et al.

[1] Rate shown for item 10 of quality statement "Rate Here Established" is rate provided by contract at the time the quality statement was prepared rather than the contract rate on September 1, 1965.

[2] Rate schedule cancelled. Quality statement made an exhibit to the rate schedule.

[3] Agent.

[4] Includes quality statement filed by the predecessor, Marathon Oil Company.

[5] Quality statement relates to the sale of residue gas not derived from new gas-well gas.

APPENDIX C

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Amerada Petroleum Corporation	*30	23	**Sinclair Oil & Gas Company**	51	15
	51	7		*90	4
	126	4		254	6
Atlantic Richfield Company	*9	8		299	4
	149	[1] 6		301	3
	248	6		334	3
	276	1	**Signal Oil & Gas Company**	*11	1
	290	1	**Skelly Oil Company**	48	9
Cities Service Oil Company	32	14		162	
Continental Oil Company	167	6	**Socony Mobil Oil Company, Inc.**	*17	
	215	6		*80	
	233	1		315	3
	283	1	**Sohio Petroleum Company**	*63	6
General Crude Oil Company	6	4		107	5
Gulf Oil Corporation	*15	31	**Sun Oil Company**	60	13
	48	6		94	6
	119	8	**Sunray DX Oil Company**	66	10
Marathon Oil Company	*4	8		95	4
Pan American Petroleum Corporation				236	[2] 1
	214	4			
	369	3			

***Operator, et al.**

[1] Insofar as the gas produced from the Puckett-Devonian Formation is concerned.

[2] Item 9 of the Quality Statement, "Applicable Rate", does not reflect a deduction of 0.09¢ per Mcf for excess water content.

APPENDIX D

1. *Sales to El Paso Natural Gas Company*

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Amerada Petroleum Corporation	1	27	Hunt Industries	5	3
	31	12	Hunt Oil Company	48	5
	55	9		61	3
	56	14	Caroline Hunt Trust	2	4
	**57	11	H. L. Hunt	6	10
	101	4		21	4
	125	1	Marathon Oil Company	6	7
Atlantic Richfield Company	11	9		27	7
	15	11	A. H. Meadows	1	5
	17	10	Midwest Oil Corporation	**12	[1] 3
	18	12	Northern Natural Gas Producing Company.	22	3
	19	10			
	20	20	Odessa Natural Gasoline Company.	6	1
	29	13			
	139	8	Pan American Petroleum Corporation.	20	13
	140	10			
	243	11		*21	13
	289	2		***68	10
Aztec Oil & Gas Company	6	11		101	9
Perry R. Bass	**1	3		110	25
The British-American Oil Producing Co.	6	[1] 7		**136	22
	39	[1] 3		191	8
	65	1		218	6
F. A. Callery, Inc	***8	9		234	7
Cities Service Oil Company	18	17		249	8
	**19	11		271	8
	20	9		317	7
	21	10		*348	12
	22	8		402	2
	23	8	Phillips Petroleum Company	*7	11
	24	10		10	17
	26	6		**32	27
	27	7		**33	14
	28	6		40	(2)
	**51	17		*64	14
	52	9		**65	14
	*105	9		*243	17
	135	7		260	6
	177	15		**274	6
	195	2		358	6
	**199	11		*363	14
	204	[1] 2		397	3
Continental Oil Company	**85	25	Samedan Oil Corporation	**1	9
	**92	15		**3	11
	**104	15	Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company.	11	14
	**109	13			
	**145	8			
	163	7		13	17
	181	6		**28	11
	*190	4		37	10
	**214	15		38	8
	261	5		**40	16
	276	6		41	9
General American Oil Company of Texas.	32	7		**42	19
				**43	10
Gulf Oil Corporation	8	9		**44	12
	9	7		56	12
	12	10		57	11
	16	17		**58	27
	56	5		59	12
	118	9		82	1
	144	4	Shell Oil Company	15	(2)
	146	5		17	17
	240	3		18	13
	244	2		*19	16
Humble Oil & Refining Company.	8	(2)		134	15
	9	12		249	7
	28	13		273	5
	31	16		305	5
	33	10	Signal Oil & Gas Company	**4	4
	45	11		***7	3
	116	14		**12	4
	**138	4	Sinclair Oil & Gas Company	8	23
	159	4		13	6
	160	6		71	8
	259	6		83	8
	260	10		92	8
	308	5		*168	5
	**330	5		170	7
	344	3		174	8

APPENDIX D—continued

1. *Sales to El Paso Natural Gas Company*—Continued

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Sinclair Oil & Gas Company—Continued	215	5		150	5
	221	3		151	6
	*222	[7] 7		176	2
	223	3	Sunray DX Oil Company	62	12
	**261	3		64	11
	**265	[8] 13		93	9
	**265	14		142	8
	286	11	The Superior Oil Company	8	11
	307	3		10	13
	65	12	Tenneco Oil Company	46	[1] 4
Skelly Oil Company	*31	5		**138	10
	45	6		146	5
	58	7		160	6
	60	9	Texaco Inc	19	11
	69	8		21	15
	72	8		23	13
	**78	17		25	13
	108	6		28	8
	167	2		29	8
Socony Mobil Oil Company, Inc.	86	10		30	10
	90	9		168	13
	92	9		169	9
	101	13		254	4
	208	9		292	5
	**209	6		350	1
	210	6	Tidewater Oil Company	4	11
	211	11		**38	15
	**241	14		39	16
Sohio Petroleum Company	**64	11		**43	21
	**97	[1] 8	Union Oil Company of California	97	2
Southern Union Production Company.	4	(5)		100	12
				109	7
Standard Oil Company of Texas, a Division of Chevron Oil Company.	9	9		128	8
	17	11		129	7
	18	11		**131	5
	**19	17	Union Texas Petroleum, a division of Allied Chemical Corporation.	***22	10
	32	4		***38	7
Sun Oil Company	1	12		***39	9
	30	14		48	4
	58	19		**49	13
	61	13		***74	1
	65	10	Warren Petroleum Corporation	*28	8

APPENDIX D

2. *Sales to Northern Natural Gas Company*[9]

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Getty Oil Company	3	7	Tidewater Oil Company	67	4
	5	9		76	6
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company.	27	8			

APPENDIX D

3. *Sales to Transwestern Pipeline Company*

Producer	Rate schedule No.	Supplement No.
Atlantic Richfield Company	232	1
Perry R. Bass	**6	9
	**6	10
	**6	11
	**6	12
	**6	13
The British-American Oil Producing Company.	35	7
	35	8
Cabot Corporation (SW)	*44	4
	*44	5
	*49	2
	*49	3
Continental Oil Company	176	3
	**180	[3] 5
	**180	[4] 6
Gulf Oil Corporation	**193	18
	194	9
	197	12
	213	7
	215	7
Humble Oil & Refining Company.	276	[4] 4
	276	[3] 5
Alexander G. Kaspar and Frank Kell Cahoon.	**1	5
Marathon Oil Company	51	4
	63	2
	79	[10] 4
McCulloch Oil Corporation of California.	***3	1
Northern Natural Gas Producing Company.	18	2
Pan American Petroleum Corporation	279	5
	329	3
Shell Oil Company	251	[3] 7
	251	[4] 8
	255	7
Sinclair Oil & Gas Company	199	[6] 4
	214	6
Socony Mobil Oil Company, Inc.	226	9
	227	15
	228	9
	256	4
	260	3
Standard Oil Company of Texas, a Division of Chevron Oil Company	21	3
	22	5
	23	4
	24	4
	25	4
Sun Oil Company	124	5
	132	4
Texaco Inc.	227	5
Union Oil Company of California.	48	4
	124	5
Union Texas Petroleum, a Division of Allied Chemical Corporation	80	12
Warren Petroleum Corporation	50	[1] 5

FOOTNOTES

*Operator.

**Operator, et al.

***Et al.

[1] Item 10 of Quality Statement, "Rate Here Established," shows the applicable area ceiling rather than the lower contract rate because of Favored Nation provisions in the contract.

[2] Footnote deleted.

[3] Insofar as the Devonian Formation gas is concerned.

[4] Insofar as the Pennsylvanian Formation gas is concerned.

[5] Rate Schedule cancelled. Quality Statement made an exhibit to the rate schedule.

[6] Insofar as the sale of old gas-well gas. No Quality Statement has been filed to cover the sale of casinghead gas.

[7] Includes Quality Statement filed by the predecessor, Cabot Corporation.

[8] Includes Quality Statement filed by the predecessor, Western Natural Gas Company.

[9] Buyer and seller agree on treating costs but disagree on seller applying credits for Btu's between 1000 and 1050 to offset treating costs.

[10] Quality statement relates to the sale of new gas-well gas.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-49; UNITED FUEL GAS COMPANY, RP66-2; COLUMBIA GULF TRANSMISSION COMPANY, RP66-22

ORDER MODIFYING AND AFFIRMING ISSUANCE OF SUBPOENAS DUCES TECUM BY PRESIDING EXAMINER

(Issued June 13, 1966)*

The Presiding Examiner in these consolidated proceedings on May 8, 1966, issued subpoenas duces tecum to each of the three Respondents herein [1] and also issued subpoenas duces tecum to five of their affiliates in the Columbia Gas System.[2] The Examiner acted upon the application for issuance of the subpoenas filed by the Electric Company interveners [3] on February 1, 1966, as amended on April 8, 1966. The subpoenas direct Respondents and their five affiliates to produce books, records, studies, and data for inspection of the Electric Company interveners.[4]

These consolidated proceedings involve the proposed restructured tariffs filed by Seaboard and United Fuel and a rate investigation of Columbia Gulf's tariff. Although four of the five affiliated companies (excepting ServCorp) served with the subpoenas have also proposed restructured tariffs, the pending proceedings involving these proposals have not been consolidated for hearing herein.[5]

Upon motion of the Respondents on April 12, 1966, the Presiding Examiner granted a stay of issuance of the eight subpoenas pending their appeal to the Commission. On April 19, 1966, the Electric Companies filed a motion for oral argument of the appeal before the Commission, and Respondents on April 25, and May 5 filed answers in which they supported the request for oral argument.

In their original application for subpoenas duces tecum the Electric Companies requested there be made available to them thirteen items of data, computations, and studies, most of which were directed to all seven of the affiliated natural gas companies (only Item 12 was directed to ServCorp). Electric Companies state that the issues involved in these consolidated proceedings, to whch they contend the subpoenas are relevant and material, are: (1) the so-called "pooled gas supply" operations characteristic of the Columbia System is a factor significant to the rate proposals herein, making consideration of the operations of all seven affiliates essential to the proper cost allocations and rate designs of the three Respondents; (2) service discrimination in Seaboard's and United Fuel's offering of Winter Service volumes; and (3) possible rate discrimination between classes of jurisdictional customers.

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*Rehearing denied by order issued July 29, 1966, 36 FPC 322.

[1] Atlantic Seaboard Corporation (Seaboard), United Fuel Gas Company (United Fuel), and Columbia Gulf Transmission Company (Columbia Gulf).

[2] The Manufacturers Light and Heat Company (Manufacturers), Home Gas Company (Home), Kentucky Gas Transmission Company (Kentucky Gas), The Ohio Fuel Gas Company (Ohio Fuel) and Columbia Gas System Service Corporation (ServCorp) are all interveners herein except Home and ServCorp. The latter has not been held to be a "natural-gas company" under the Natural Gas Act.

[3] Appalachian Power Company, Kentucky Power Company, Ohio Power Company and Wheeling Electric Company (Electric Companies).

[4] Appalachian Power Company was permitted to intervene in RP65-49 by order issued August 26, 1965, 34 FPC 593, application for reconsideration denied September 27, 1965, 34 FPC 970. All four Electric Companies were permitted to intervene in Docket No. RP66-2 by order issued January 27, 1966, 35 FPC 158.

[5] The Commission, by order issued January 27, 1966, 35 FPC 160, rejected Electric Companies' motion to consolidate the rate proceedings of the four affiliates.

In support of their inclusion of the "pooled gas supply" issue, the Electric Companies cite statements of witnesses and the Commission in prior proceedings. They also contend that they have found in the course of their inspection of Respondents' records various operational facts which indicate that the contract demands in the service agreements of United Fuel's customers may not reflect the actual operational situation. In support of the need for cost and operational data and studies backing up Respondents' *pro forma* 1966 revenue statements, Electric Companies assert that such data and material would provide the basis for ascertaining whether such revenues and the proposed rates are synchronized with the cost of service for such period.

The three Respondents and their affiliates filed their appeals of the issuance of the subpoenas on April 25, 1966, making two main points. They contend that the Presiding Examiner has erroneously found that all the data and material requested by Electric Companies have been shown to be relevant and material to the issues (pursuant to Section 1.23(a) of the Commission's Rules of Practice and Procedure) and are outside the scope of the hearings provided by Commission orders herein. The Respondents assert that since the Columbia System companies adopted contract demand rates, the practice of cutting back takes from United Fuel by its customers Manufacturers and Ohio Fuel has been discontinued except under force majeur conditions.[6] The Respondents further assert that much of the data and material are not available since large portions of the 13 items listed in the application for subpoena would require computations, compilations and studies which have not been made by them. The Electric Companies filed an answer to the appeals on May 5, 1966.

It appears that the Presiding Examiner issued the subpoenas after hearing oral argument on April 1, 1966, of substantially the same contentions presented in pleadings to us at this time. In addition to finding the requested data relevant and material, he ruled that Respondents and the four affiliates to whom the subpoenas are addressed are not required to make computations, compilations or studies, in the sense that if any of the data and material are not in existence at this time, the eight affiliates may not be compelled to produce such items applied for. In view of this ruling, the Electric Companies have successively withdrawn their requests for items wherever they have been shown that data and material were not available. According to Electric Companies' answer to the Respondents' appeal, filed May 5, 1966, they no longer expect ServCorp to produce "Item 12," "Columbia System daily dispatcher log sheets," the only item sought from ServCorp. Moreover, they have withdrawn their request for Item 13 as being non-existent, and for Items 1, 3 and 5 of the Application as having been previously provided by Respondents.

Upon our consideration of all the contentions of the Respondents, of their four affiliates, and of the Electric Companies, we cannot find that the Presiding Examiner erred when he found that the data and material requested, insofar as it is available and in existence without further computations or studies, are relevant and material to issues which may be raised by the parties in these consolidated proceedings. We furthermore, conclude that the subpoenas duces tecum issued by the Presiding Examiner, with the exception of the subpoena issue to ServCorp, should be affirmed and the Respondents' and their affiliates' appeals should be denied.

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[6] In this connection, United Fuel on May 27, 1966, filed an agreement with Manufacturers providing for the latter to cut back its takes 50,000 Mcf per day for a 60-day period commencing May 16, to enable United Fuel to make up a storage deficiency, which agreement contemplates that both Manufacturers and Ohio Fuel will absorb the cut-back by increasing takes from their other suppliers. What the implications of this and Electric Companies' observations may be cannot be said to be irrelevant and immaterial to the consideration of the contract demands of United Fuel's customers or, as Electric Companies contend, the consideration of the Columbia System "pooled gas supply" as a factor in allocating costs and designing rates for the three Respondents.

The Commission orders:

(A) The subpoenas duces tecum issued by the Presiding Examiner on April 8, 1966, directing the three Respondents, Manufacturers, Home, Kentucky Gas, and Ohio Fuel to produce the data and material therein specified, are hereby affirmed.

(B) The subpoena duces tecum issued similarly to ServCorp is hereby rescinded.

(C) The Electric Companies' request for oral argument and the appeals of the Respondents and their affiliates are hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BLACK MARLIN PIPELINE COMPANY, DOCKET NO. CP66-333

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On April 21, 1966, Black Marlin Pipeline Company (Applicant) filed in Docket No. CP66-333 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline extending from the Outer Continental Shelf in the Gulf of Mexico offshore of Texas Railroad Commission District No. 3 to points in the vicinity of Texas City, Texas, and the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Specifically, Applicant will construct and operate approximately 54 miles of 16-inch O.D. transmission pipeline extending from Federal Block 136 in the Gulf of Mexico to Texas City, Texas, and measuring and regulating facilities and appurtenances.

Applicant is a newly formed corporation which has been incorporated for the purpose of transporting natural gas which Union Carbide Corporation (Union Carbide) will purchase from Shell Oil Company's (Shell) interest in Federal Blocks 135, 136, 160 and 161 (known collectively as the Den Field) located in the Gulf of Mexico. Applicant will also transport gas from the Den Field for Phillips Petroleum Company (Phillips). Shell and Phillips are joint and equal owners of the Den Field, which is estimated to contain reserves in the amount of 405,000 Mcf (at 14.65 psia) in the portion of the field which is developed.

Applicant has entered into a General Gas Transportation Agreement with Union Carbide dated March 1, 1966. The agreement reserves a daily transmission capacity of 154,375 Mcf to Union Carbide. The Contract Quantity (minimum billing) is 123,500 Mcf per day. Natural gas purchased by Union Carbide from Shell is to be delivered to Black Marlin at the offshore metering station and redelivered by Black Marlin to Union Carbide at the latter's Texas City, Texas, plant.

The contract further provides that revenues obtained by Applicant for the transportation of natural gas for others, pursuant to a Limited Release of transportation space executed by Applicant and Union Carbide, are to be credited against Union Carbide's minimum bill obligations. To the extent that such released space is not used by others, the space remains available to Union Carbide.

A Limited Release arrangement has been entered into between Applicant and Union Carbide to permit Phillips to receive its share of production from the Den Field. Applicant states that Shell's sale of its production to Union Carbide has made it advisable for Phillips to arrange for separate disposition of its own share of the Den Field gas. This has been accomplished by the execution of the Limited Release by Union Carbide of a Contract Quantity and related Transportation Quantity to be made available by Applicant equivalent to the Daily Contract Quantity under the Shell Contract.

Applicant has entered into a Limited Gas Transportation Agreement with Phillips dated April 1, 1966. Applicant is obligated under the agreement to transport for Phillips volumes of natural gas from the Den Field up to the initial Transportation Quantity, to a point slightly downstream of Applicant's delivery point to Union Carbide, at Texas City.

After such transportation, Applicant will redeliver to Phillips the natural gas which will then be transported by an existing intrastate pipeline facility belonging to Pan American Gas Company (Pan American). Exemption of Pan American's intrastate transportation function is being granted concurrently herewith in Docket No. CP66–369, *infra*, p. 983, pursuant to Section 1(c) of the Natural Gas Act.

The transportation fee to be charged by Applicant to both Union Carbide and Phillips is 2.1 cents per Mcf. Applicant is also authorized under such agreement to retain any condensate removed from the gas stream by conventional lease separation after the gas enters its pipeline.

The volumes to be transported by Applicant pursuant to the above-described agreements are as follows:

	Mcf at 14.65 psia	
	Phillips	Union Carbide
Contract Quantity	55,600	67,900
Transportation Quantity	69,500	84,875

The estimated cost of the facilities to be constructed by Applicant is $6,500,000, which will be financed by $1,450,000, of equity funds supplied by stockholders and $5,050,000, from 12-year secured promissory notes.

Due notice of the filing of the application was published in the Federal Register on April 29, 1966 (31 F.R. 6518). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Black Marlin Pipeline Company, a Texas corporation with its principal place of business in Dallas, Texas, upon completion of the facilities and the commencement of operations proposed in the instant filing, will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of the facilities and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Black Marlin Pipeline Company, authorizing the construction and operation of the facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and(f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) Applicant shall file copies of its transportation contracts with Union Carbide Corporation and with Phillips Petroleum Company pursuant to Section 154.52 of the Commission's Regulations under the Natural Gas Act, not less than 30 days nor more than 60 days prior to the commencement of the transportation service, as required in Section 154.22 of said Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NOS. CP66-316 AND CP66-317, AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-318

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULE FOR FILING

(Issued June 13, 1966)

On April 6, 1966, Colorado Interstate Gas Company (Colorado Interstate) filed in Docket No. CP66-316 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the establishment of a new delivery point for sales of natural gas to Natural Gas Pipeline Company of America (Natural) and to increase the average daily contract quantity of firm deliveries to Natural, all as more fully set forth in the application.

Colorado Interstate seeks authorization for the following:

(1) to establish a new delivery point for sales to Natural under its Rate Schedule H-1 (to be revised) and to construct and operate the required measurement facilities,

(2) to increase the average daily contract quantity of firm deliveries to Natural under Rate Schedule F-1 from 134,000 Mcf of gas per day to 160,000 Mcf per day.

The proposed new delivery point in Docket No. CP66-316 for gas to be sold under revised Rate Schedule H-1 is in lieu of the one currently being used near Hooker, Oklahoma for deliveries under existing Rate Schedule H-1. Natural has advised Colorado Interstate its Hooker Compressor Station, which pumps both local production and the gas delivered by Colorado Interstate will soon be underpowered because of declining field pressures and that by diverting Colorado Interstate's gas to the new delivery point which is located on Natural's main transmission line, the need for additional compression facilities will be alleviated.

The total estimated cost of Colorado Interstate's proposed measuring facilities is $6,847, which will be financed from current working funds.

On April 6, 1966, Colorado Interstate filed in Docket No. CP66-317 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation and exchange of natural gas with Natural, all as more fully set forth in the application.

Colorado Interstate proposes in Docket No. CP66-316 to construct and operate the following facilities:

(1) a meter station and pipeline tap located at the point of interconnection of Applicant's 22-inch Mocane-to-Hooker pipeline with the main pipeline of Natural in Beaver County, Oklahoma;

(2) a meter station in Caddo County, Oklahoma, to be used to measure gas delivered by Natural to Public Service Company of Oklahoma (Public Service) for Colorado Interstate's account.

Colorado Interstate proposes in Docket No. CP66-317 to make a two-year direct sale to Public Service, which will use the gas for boiler fuel, primarily in the summer months, in its southwestern power plant near Anadarko, Oklahoma. Public Service has agreed to purchase a minimum volume of 1,500,000 Mcf and 2,500,000 Mcf in the first and second years, respectively. Colorado Interstate's maximum delivery obligation on any one day shall not be more than 15,000 Mcf in the first year and 30,000 Mcf in the second. All deliveries will be interrupted at Colorado Interstate's discretion.

Natural has agreed to deliver the volumes to Public Service for Colorado Interstate's account at the proposed interconnection in Caddo County. Colorado Interstate will reimburse Natural for the cost of installing the pipeline tap through which the deliveries will be made. Colorado Interstate further proposes to transport and deliver to Natural a volume of gas equal in thermal content to the volumes delivered by Natural to Public Service. This exchange gas is to be delivered through the proposed interconnection in Beaver County.

The total estimated cost of the facilities to be constructed by Colorado Interstate and the reimbursement by Colorado Interstate to Natural for the pipeline tap to be constructed by Natural in Caddo County is $41,870, which will be financed from current working funds on hand.

On April 6, 1966, Natural filed in Docket No. CP66-318 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the exchange of natural gas with Colorado Interstate, all as more fully set forth in the application.

Natural proposes in Docket No. CP66-318 to construct and operate a tap connection in Beaver County, Oklahoma on its Amarillo line at a point where Colorado Interstate's 22-inch Hooker line crosses Natural's Amarillo line, and to construct and operate a tap connection on its 26-inch Oklahoma extension pipeline in Caddo County, Oklahoma.

Natural states that in a precedent agreement dated February 3, 1966, Natural and Colorado Interstate have agreed, *inter alia*, that the delivery point for gas received by Natural from Colorado Interstate shall be changed from Natural's Hooker station to Natural's Amarillo line, and that Natural and Colorado Interstate will exchange natural gas, thus allowing Colorado Interstate to sell volumes of natural gas to Public Service. Natural further states that the parties have also agreed in said precedent agreement that Colorado Interstate's rate schedule H-1 shall be revised and that Natural will purchase increased quantities of gas from Colorado Interstate under that company's rate schedule F-1, said volumes to be delivered at existing delivery points.

Under the terms of an exchange agreement dated January 3, 1966, the parties have agreed that Natural will deliver up to 15,000 Mcf of gas per day to Public Service for Colorado Interstate's account during the first year of the proposed exchange and up to 30,000 Mcf per day during the remaining term of the agreement. Natural further states that volumes equal in thermal content to those which it delivers to Public Service will be delivered to Natural by Colorado Interstate in Beaver County, Oklahoma at the same delivery point in Beaver County, Oklahoma for which authority is requested by the instant application.

The total estimated cost of Natural's proposed construction in Docket No. CP66-318 is $16,900, which cost will be financed from funds on hand.

Colorado Interstate has filed concurrently Rate Schedule X-29 comprising Original Sheet Nos. 141 through 146 to its FPC Gas Tariff, Second Revised Volume No. 2, with its certificate application to cover the proposed exchange, and requests that it be made effective on the date certificate authorization is granted.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(3) The proposed construction and operation of facilities, transportation, exchange and sale of natural gas, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities, the transportation, exchange and sale of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Colorado Interstate and Natural are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Colorado's and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity are issued to Colorado Interstate and Natural authorizing the construction and operation of facilities, and the transportation, exchange and sale of natural gas as more fully described in the applications in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Colorado Interstate's and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation, exchange and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Colorado Interstate's proposed Rate Schedule X–29 comprising Original Sheet Nos. 141 through 146 to its FPC Gas Tariff, Second Revised Volume No. 2 is accepted for filing effective on the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP66–297

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On March 21, 1966, Mountain Fuel Supply Company (Applicant) filed in Docket No. CP66–297 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 16.8 miles of 20-inch pipeline replacing an existing 8-inch pipeline between the Hiawatha and Powder Wash Fields in Moffat County, Colorado, all as more fully set forth in the application in this proceeding.

Specifically, Applicant will construct the proposed new line extending from the end of Applicant's existing 20-inch pipeline terminating in the Hiawatha Field eastward to the Powder Wash Field, together with appurtenant facilities. Because of a more direct route, the proposed new line will be approximately 0.4 of a mile shorter than the existing 8-inch line to be replaced.

Applicant states that the new facilities will remove the existing "bottle neck" between Powder Wash and Hiawatha and will enable Applicant to deplete the gas reserves in the fields east of Hiawatha ratably with the other reserves it owns or controls and, further, will increase the reliability of Applicant's peak day supply should a failure occur in other fields or other parts of its system. Applicant states further that the use of 20-inch pipe will enable Applicant to remove pipeline liquids by "on-stream ball cleaning" in one continuous operation from Powder Wash to the Nightingale Compressor Station.

The total estimated cost of the proposed facilities is $739,000, which cost will be financed out of funds on hand and from short term bank loans as may be required.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G–154 (2 FPC 288).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the re-

quirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Mountain Fuel Supply Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PAN AMERICAN GAS COMPANY, DOCKET NO. CP66-369

DECLARATION OF EXEMPTION

(Issued June 13, 1966)

Pan American Gas Company (Applicant) filed an application on May 16, 1966, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof, of natural gas facilities constituting its system in the State of Texas.

Applicant, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is engaged in the transportation and sale of natural gas in the State of Texas, from a transportation system located principally in Chambers, Harris and Galveston Counties, with separated segments in Matagorda, Brazoria and Jefferson Counties, Texas, connected with Valley Pipe Lines, Inc., and Lo-Vaca Gathering Company, respectively.

Applicant under an agreement dated March 30, 1966, with Phillips Petroleum Company (Phillips) will receive interstate natural gas from Phillips in the State of Texas (via Black Marlin Pipeline Company, Docket No. CP66-333, *supra*, p. 976) and will transport said natural gas through its principal system and will deliver equivalent volumes to Phillips at various points in the State of Texas.

All natural gas received by Applicant for transportation, and sale through its system is and will be consumed ultimately within the State of Texas, and all of its facilities so involved are located within said State.

The Railroad Commission of Texas has certified to the Federal Power Commission that it has regulatory jurisdiction over the rate and services and facilities of the Applicant and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

> Pan American Gas Company is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PLACID OIL COMPANY, DOCKET NOS. G-13183, G-13184; J. R. FRANKEL, ET AL., G-13197; HASSIE HUNT TRUST, G-14109; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65-31

ORDER REQUIRING REPORT OF INTENDED DISPOSITION OF REFUNDS AND REQUIRING RETENTION OF REFUNDS PENDING FURTHER ORDER

(Issued June 13, 1966)

By its order issued April 6, 1966, 35 FPC 477, the Commission prescribed the procedures to be followed by Transcontinental Gas Pipe Line Corporation (Transco), among others, in the disposition of certain refunds resulting from Commission Opinion Nos. 398 and 398-A, 30 FPC 283, 682. Since the issuance of the order of April 6, 1966, Transco has received refunds from other producers involved in these proceedings and it is appropriate that the same procedure be prescribed for those refunds.

The Commission orders:

Refunds which Transco has received and which it may hereafter receive from Placid Oil Company, Hassie Hunt Trust and J. R. Frankel, *et al.* pursuant to Commission Opinion Nos. 398 and 398-A shall be retained or distributed in the same manner as provided in paragraphs (C), (E), (F) and (H) of the Commission's order issued April 6, 1966 in Docket No. G-13183, *et al.*, with regard to refunds it received from The Superior Oil Company.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PLATEAU NATURAL GAS COMPANY, DOCKET NO. CP66-324

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On April 8, 1966, Plateau Natural Gas Company (Applicant) filed in Docket No. CP66-324 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant will construct and operate the following additions and extensions to its interstate transmission system:

(1) 14 miles of 4-inch pipeline interconnecting its Coldwater and Wilcon irrigation systems,

(2) 12 miles of 6-inch pipeline interconnecting its Rehm and Sedan irrigation systems,

(3) 6 miles of 4-inch pipeline addition to the east end of its Wilcon irrigation system,

(4) 3½ miles of 4-inch pipeline extending its Coldwater irrigation system from Dallam County, Texas, into Cimarron County, Oklahoma, together with a meter station, to serve the east end of the distribution system of Felt Water Development Company, an existing resale customer of Applicant and

(5) 5 miles of 4-inch pipeline loop in Baca County, Colorado.

The five miles of 4-inch pipeline loop will be constructed on Applicant's existing Kansas-Colorado main pipeline in Baca County, Colorado, and provide a maximum of approximately 3,200 Mcf of gas per day of additional capacity. The other facilities will interconnect and extend Applicant's present irrigation system in Dallam County, Texas, and Cimarron County, Oklahoma. The irrigation facilities will be used to meet Applicant's increased market requirements as well as to provide irrigation service to new customers in Colorado, Texas and Oklahoma.

The 3½ miles of 4-inch pipeline and meter station in Cimarron County, Oklahoma, will provide an additional delivery point for sale for resale of natural gas on an interruptible basis to the Felt Water Development Company, an existing resale customer.

No change of rates is proposed. Applicant will continue its direct sale of natural gas for irrigation purposes at an average rate in the Panhandle Division of 35.091 cents per Mcf and in the Southern Division of 33.990 cents per Mcf.

Jurisdictional sales of natural gas will continue to be made under existing Rate Schedules I–1, GS–1 and IS–1 at rates of 23.5 cents per Mcf, 28.0 cents per Mcf and 21.5 cents per Mcf, respectively.

The total estimated cost of the facilities to be constructed by Applicant is $333,000, which will be financed from cash on hand and from the proceeds of short-term bank loans.

Due notice of the filing of the application was published in the Federal Register on April 22, 1966 (31 F.R. 6220). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Plateau Natural Gas Company, a Colorado corporation with its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 25, 1966, in Docket No. CP66–154 (35 FPC 153).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transporta-

tion of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Plateau Natural Gas Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) Applicant shall make appropriate changes in its service agreements reflecting the herein proposed deliveries and delivery points.

(E) The certificate issued by paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ST. JOSEPH LIGHT & POWER COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-338

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 13, 1966)

On April 27, 1966, St. Joseph Light & Power Company (Applicant) filed in Docket No. CP66-338 an application, supplemented on May 9, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order requiring Michigan Wisconsin Pipe Line Company (Respondent) to extend its gas transportation facilities, to make physical connection of its facilities with the facilities to be constructed by Applicant and to sell and deliver up to 700 Mcf of natural gas per day to Applicant for resale and distribution in Forest City and Oregon, Missouri, all as more fully set forth in the application.

Applicant states that approximately 13.5 miles of 4-inch lateral pipeline will be required, extending from a point on Respondent's existing transmission system near Bigelow, Missouri, in a southeasterly direction to a town border station at the northwest city limits of Forest City, Missouri. Approximately 2.3 miles of the proposed lateral pipeline will be constructed by Respondent pursuant to its "10-cent formula". Applicant will construct approximately 11.2 miles of the lateral pipeline, a regulating station, and the distribution systems in Forest City and Oregon, Missouri.

The estimated natural gas requirements for these communities during the initial three years of proposed operations are as follows:

	First year	Second year	Third year
Peak day (Mcf)	520	660	700
Annual (Mcf)	50,000	64,000	68,700

Respondent will render this service to Applicant pursuant to Respondent's FPC Rate Schedule SGS-1, which calls for a rate of 43 cents per Mcf during the first 30 months' development period and 44.6 cents per Mcf thereafter.

The estimated cost of the facilities to be constructed by Applicant is $386,800, which will be financed from internally generated funds.

Applicant was awarded franchises to provide natural gas service in Forest City and in Oregon by special elections held on November 23, 1965, in each city.

Applicant has also requested a certificate of convenience and necessity from the Missouri Public Service Commission. Consideration of that application will follow the issuance of this order.

On May 11, 1966, Respondent filed an answer to the application and stated that it has no objection to the proposal and will construct 2.3 miles of 4-inch lateral pursuant to its "10-cent formula", provided Respondent's application in Docket No. CP66-208 is first approved. A certificate of public convenience and necessity authorizing Respondent's proposed expansion was issued in Docket No. CP66-208 on May 24, 1966, 35 FPC 777.

Due notice of the filing of the application was published in the Federal Register on May 11, 1966 (31 F.R. 6925). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to extend its facilities, to establish a physical connection of its transmission system with the facilities to be constructed by Applicant and

to sell and deliver to Applicant up to 700 Mcf of natural gas per day for resale and distribution in Forest City and Oregon, Missouri, as hereinbefore described and as more fully described in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to extend its facilities, to establish a physical connection of its transmission system with the facilities to be constructed by Applicant and to sell and deliver to Applicant up to 700 Mcf of natural gas per day for resale and distribution in Forest City and Oregon, Missouri, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) The authorization granted by paragraph (A) above is conditioned upon Applicant's filing with the Commission proof of the issuance of the required authorization from the Missouri Public Service Commission.

(E) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66–309

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On March 28, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP66–309 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation and delivery of natural gas, on an interruptible basis, to American Can Company doing business as Allison Lumber Company (Allison) for use in the latter's lumber mill near Bellamy, Alabama, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate 3.2 miles of 2-inch lateral pipeline from a point on its main South Line in Sumpter County, Alabama, to Allison's plant, together with a measuring station at the terminus of said proposed line. Applicant and Allison have entered into a contract, dated February 23, 1966, providing for the sale and purchase of natural gas for the entire fuel requirements of Allison's mill (exclusive of the portion of such requirements as may be supplied by wood waste produced in the normal operation of the mill). These requirements are estimated to be 4,500 Mcf per day. Subject to certain possible adjustments as set forth in the contract, the rate for the proposed sale will be 32.1 cents per Mcf until Applicant has delivered to Allison 1,800,000 Mcf; after which the price will be reduced by 3.5 cents per Mcf.

Allison will utilize natural gas to produce steam for powering sawmill machinery and to operate lumber drying kilns. Allison has been using wood waste as a primary fuel; however, Allison now intends to use the wood waste as a raw material in the manufacture of a saleable product.

The estimated cost of the proposed facilities is $68,170, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of up to 4,500 Mcf of natural gas per day by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver up to 4,500 Mcf of natural gas per day to Allison as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the proposed transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within five months from the date on which this order issues.

(D) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-229

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On January 17, 1966, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP66-229 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to receive natural gas produced in the Hell Hole Bayou Field, Vermilion Parish, Louisiana, by Consolidated Gas Supply Corporation, Oil and Gas Futures, Inc. of Texas, Exchange Oil & Gas Company, Sinclair Oil & Gas Company, and North Central Oil Corporation (Consolidated, *et al.*), all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate 12.5 miles of 12-inch lateral pipeline extending from a point on its 20-inch North Fresh Water Bayou pipeline to a delivery point in the Hell Hole Bayou Area, Vermilion Parish, Louisiana, and one meter station. The total estimated cost of these facilities is $800,000, which cost will be financed through the issuance of short term debt pending permanent debt financing.

Applicant and Consolidated, *et al.*, have entered into a contract dated September 28, 1965, providing for the sale and purchase of the subject gas.

On March 3, 1966, Applicant was issued a temporary certificate authorizing the construction and operation of the proposed facilities. On March 3, 1966, Consolidated, *et al.*, was issued temporary certificates in Docket Nos. CP66-225, CI66-494 and CI66-601 conditioned upon a total price of 20.625 cents per Mcf at 15.025 psia subject to Consolidated, *et al.*, refunding to Applicant from the date of initial delivery, with interest at seven percent per annum, any amounts collected in excess of the amounts resulting from the rate finally determined to be required by the public convenience and necessity in the respective dockets.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. G-9116 AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. G-9117

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On April 14, 1966, United Gas Pipe Line Company (United), and Transcontinental Gas Pipe Line Corporation (Transco), referred to as Petitioners filed in Docket Nos. G-9116 and G-9117 a petition to amend the order issued in said dockets on November 29, 1955, 14 FPC 1121, requesting authorization for the operation, as an emergency interconnection, of an existing point of interconnection between the Petitioners' pipeline facilities in Pike County, Mississippi, pursuant to an agreement between the parties dated June 1, 1955, as amended March 3, 1966, all as more fully set forth in the petition to amend.

By order issued in the instant dockets on November 29, 1955, Petitioners were granted certificates of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Walthrall County, Mississippi, to be used for the emergency exchange of natural gas under the terms of an exchange agreement between the Petitioners dated June 1, 1955 (United's Rate Schedule X–6 and Transco's Rate Schedule X–14).

On May 24, 1965, 33 FPC 1060, United and Transco, as joint Applicants in Docket No. CP65–308, were authorized to construct and operate facilities for two separate interconnections denominated (A) and (B), between their systems in Pike County, Mississippi for the exchange of gas under their exchange agreement of March 28, 1965. At point (B), 30-inch diameter lines of both Applicants are interconnected. At point (A) deliveries can only be reasonably made by Transco to United.

Petitioners state that the proposed additional point (B) will be used by them for the emergency exchange of natural gas under the existing agreement between the parties dated June 1, 1955, as amended, and will facilitate the exchange of gas under such agreement. Petitioners further state that at the appropriate time the amendatory agreement of March 3, 1966, will be filed with the Commission amending United's Rate Schedule X–6 and Transco's Rate Schedule X–14.

Due notice of the subject petition to amend and opportunity for hearing has been given by publication in the Federal Register on May 5, 1966 (31 F.R. 6760). No protest, petition to intervene or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued November 29, 1955, in Docket Nos. G–9116 and G–9117 authorizing the construction and operation of certain facilities for the emergency exchange of natural gas, be amended so as to authorize the use of an existing point of interconnection of Petitioner's 30-inch lines (point (B) authorized in Docket No. CP65–308) in Pike County, Mississippi, as a supplemental delivery point for the emergency exchange of gas, as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued November 29, 1955, in Docket Nos. G–9116 and G–9117 is amended so as to authorize Petitioners to use the existing point of interconnection of their respective 30-inch lines (designated point (B) in our authorization of May 24, 1965, in Docket No. CP65–308) in Pike County, Mississippi, as a supplemental delivery point for the emergency exchange of gas, as requested herein.

(B) Petitioners shall file with the Commission within thirty days of the issuance of this order the amendatory agreement of March 3, 1966, amending United's Rate Schedule X–6 and Transco's Rate Schedule X–14.

(C) In all other respects said order shall remain in full force and effect.

(D) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-322

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued June 13, 1966)

On April 7, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66-322 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to abandon two positive meters and appurtenant facilities which were originally installed to serve the following:

A. Gulf Refining Company's Orange National Bank Pump Station consisting of a positive meter station and appurtenances in Orange County, Texas, and

B. Miss-Lou Asphalt Company consisting of a positive meter station and appurtenances located at approximately Milepost 95.7 on Applicant's 16-inch Lirette-Mobile main pipeline in St. Tammany Parish, Louisiana.

Applicant states that the reason for the proposed abandonment is that the service to Gulf Refining Company was terminated effective November 1, 1965, by letter agreement between the parties dated November 9, 1965, and service to Miss-Lou Asphalt Company was terminated effective March 1, 1966, by letter agreement between the parties dated February 23, 1966. The facilities are, therefore, no longer required at their present locations.

The facilities to be abandoned will be used at other locations on Applicant's system when required or otherwise advantageously disposed of by Applicant.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in the order issued November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66–331

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

On April 20, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66–331 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale of natural gas to the City of New Summerfield, Cherokee County, Texas, for resale and distribution in New Summerfield and environs, all as more fully set forth in the application.

Applicant will construct and operate approximately 60 feet of 2-inch pipeline, a positive meter and regulator station and appurtenances in Cherokee County, Texas, near Milepost 32.5 on Applicant's 8-inch Longview-Boggy Creek to Huntsville pipeline. New Summerfield will construct and operate a natural gas distribution system to serve the potential customers in the City and the rural customers located along its pipeline in Cherokee County, extending from Applicant's proposed meter station to the City of New Summerfield.

The volumes of natural gas which are estimated to be required during the first three years of proposed operations are as follows:

	First year	Second year	Third year
Annual (Mcf at 14.9 psia)	25,900	29,400	34,850
Peak day (Mcf at 14.9 psia)	176	207	234

Applicant estimates the cost of construction of the facilities to be constructed by it will be $7,495, which will be financed out of current working funds.

Due notice of the filing of the application was published in the Federal Register on May 6, 1966 (31 F.R. 6806). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) United Gas Pipe Line Company, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transporta-

tion of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United Gas Pipe Line Company authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CRISP COUNTY POWER COMMISSION v. GEORGIA POWER COMPANY, DOCKET NO. E-7120

ORDER WAIVING INTERMEDIATE DECISION PROCEDURE

(Issued June 14, 1966)

This order waives the intermediate decision procedure and omits the initial decision of the Presiding Examiner. The settlement proposal of complainant, Crisp County Power Commission (Crisp County) and respondent, Georgia Power Company (Georgia Power) certified to the Commission by the Presiding Examiner on April 13, 1966 will be considered in the context of the whole record and briefs of all parties.

The Presiding Examiner certified the settlement proposal of complainant Crisp County and Georgia Power prior to rendering his initial decision. In doing so he also certified the complete evidentiary record, together with all other papers and filings.

This proceeding was initiated upon complaint of Crisp County filed August 8, 1963, seeking an interconnection and electric service from Georgia Power pursuant to Section 202(b) of the Federal Power Act. The settlement proposal was tendered following the conclusion of the hearings and submission of briefs to the Presiding Examiner. Comments upon the settlement proposal were submitted by Crisp County, Georgia Power and Commission staff. See Order Providing for Filing of Briefs on Settlement Proposal and Directing Immediate Temporary Emergency Interconnection and Service, issued April 22, 1966, 35 FPC 629, in the above-entitled matter.

By motion filed April 15, 1966, Commission staff requested waiver of the intermediate decision procedure pursuant to Sections 1.7(b) and 1.30 of the Commission's Rules of Practice and Procedure. Crisp County and Georgia Power did not respond to staff's motion. No other parties appear of record.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act, and the rules and regulations thereunder, and due and timely execution of the Commission's functions require waiver of the intermediate decision procedure in the above-entitled matter.

The Commission orders:

The intermediate decision procedure is hereby waived and the initial decision of the Presiding Examiner is omitted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-294

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 14, 1966)

On March 18, 1966, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66-294 an application, as supplemented on April 14, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point for the sale and delivery of natural gas to Northern Illinois Gas Company (Northern Illinois) for resale and distribution in 49 communities in Illinois, all as more fully set forth in the application.

Specifically, Applicant will construct and operate a side tap on its main transmission pipeline, approximately 200 feet of 6-inch pipeline, a meter station and other appurtenant facilities, all in Rock Island County, Illinois, for the sale of natural gas to Northern Illinois. No authorization is requested for volumes above those heretofore authorized for sale to Northern Illinois.

Northern Illinois will resell and distribute natural gas to 49 communities located in Henderson, Hancock, Adams and Pipe Counties, Illinois.

The total estimated cost of the facilities to be constructed by Applicant is $19,700, which will be financed from funds on hand.

Due notice of the filing of the application was published in the Federal Register on April 5, 1966 (31 F.R. 5389). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits, submitted in support of authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation with its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be completed and placed in actual operation and the transportation of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by September 1, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN CALIFORNIA EDISON COMPANY AND VALLEY POWER COMPANY, DOCKET NO. E-7271

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 14, 1966)

Southern California Edison Company (Edison) and Valley Power Company (Valley Power) filed a joint application with the Federal Power Commission on February 16, 1966, seeking an order pursuant to Section 203 of the Federal Power Act authorizing Edison to acquire the entire electric distribution system of Valley Power.

Edison is incorporated under the laws of the State of California and is qualified to do business in the States of Arizona and Nevada, with its principal place of business office at Los Angeles, California, and is engaged as a public utility in the business of furnishing electric service in 14 counties in the State of California and two counties in the State of Nevada. Valley Power is incorporated under the laws of the State of Nevada with its principal place of business at Gabbs, Nevada, and is engaged as a public utility in the business of distributing electric energy in the County of Nye, Nevada. It has no generation and purchases all of its electric energy requirements from Edison. It serves approximately 240 residential, 22 commercial, 9 pumping and 2 industrial customers. Valley Power is a subsidiary of Basic, Inc., a company engaged in mining and milling operations in Nye County, Nevada. Basic, Inc., presently purchases about 92% of Valley Power's available energy.

According to the application, Edison has agreed to pay Valley Power $95,000 for its electric distribution system and all other physical properties and assets, including all rights, privileges, franchises and titles held by Valley Power. According to the application, the original depreciated cost of the facilities to be acquired is approximately $34,368. The transaction will therefore result in the creation of an electric plant acquisition adjustment of approximately $60,632. Edison states that it proposes to eliminate this acquisition adjustment by a debit to Account No. 216, Unappropriated Earned Surplus. Edison states that the area served by Valley Power is completely surrounded by Edison's own service territory and Edison represents that the integration of Valley Power's territory into that of Edison will permit more orderly system planning and will prevent future duplication of facilities near the periphery of Valley Power's present territory. After the completion of purchase, Edison proposes to use such facilities for the same purposes for which they are presently being used by Valley Power and will continue Valley Power's then effective tariff schedules until such time as said schedules are changed in accordance with applicable laws and regulations.

Written notice of the application has been given to the California Public Utilities Commission, the Nevada Public Service Commission and to the Governors of these states. Notice of the application was also published in the Federal Register on March 9, 1966, (31 F.R. 4176), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before March 21, 1966, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No protest or petition has been filed.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Federal Power Commission as heretofore described and set forth in the Commission's order issued July 31, 1961, entitled *City of Colton, California* v. *Southern California Edison Company*, Docket No. E–6821 (26 FPC 223).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Valley Power, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66–274

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 14, 1966)

On February 21, 1966, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66–274 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a sales meter station and appurtenances to be used in the sale and delivery of natural gas to Virginia Pipe Line Company (Virginia Pipe), all as more fully set forth in the application.

Applicant will construct and operate the sales meter station at mile post 1409.63 on Applicant's 36-inch main transmission pipeline "C" near the community of Chatham, Pittsylvania County, Virginia. The meter station will be utilized as an additional point of delivery for the sale of natural gas for resale to Virginia Pipe, an existing customer of Applicant.

Virginia Pipe has requested the proposed new delivery point in order to serve residential and commercial customers within and adjacent to the community of Chatham. The estimated peak day and annual volumes of natural gas required during the third year of proposed operations are 300 Mcf and 55,000 Mcf, respectively. These volumes will be from present allocations of Applicant to Virginia Pipe which have been previously authorized by the Commission.

The total estimated cost of the facilities to be constructed by Applicant is $21,500, which cost will be initially financed by Applicant from its general funds. Applicant states that Virginia Pipe has agreed to reimburse Applicant in full for the entire cost of the facilities.

Due notice of the filing of the application was published in the Federal Register on March 9, 1966 (31 F.R. 4176). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued April 28, 1950, in Docket No. G–1277 (9 FPC 32).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP66-256

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 15, 1966)

On February 4, 1966, Kansas-Nebraska Natural Gas Company (Applicant) filed in Docket No. CP66-256 an application and a supplement thereto on March 21, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas, all as more fully set forth in the application and supplement thereto.

Applicant seeks authorization for the construction and operation of the following facilities:

(a) approximately 29.5 miles of 3-inch pipeline extending from Eustis to Curtis, Nebraska, together with two town border stations,

(b) approximately 6.5 miles of 2-inch pipeline extending from an existing 12-inch pipeline in Cheyenne County, Nebraska, to Potter, Nebraska and one border station,

(c) approximately 64 miles of 4-inch pipeline between O'Neill and Ainsworth, Nebraska, together with seven town border stations and,

(d) approximately 29 miles of 6-inch pipeline to replace nearly an equal amount of 4-inch top-of-ground line between O'Neill and Clearwater, Nebraska.

Applicant states that these proposed facilities will be used to initiate natural gas service in the communities of Curtis, Farnam, Potter, Ainsworth, Atkinson, Bassett, Emmet, Long Pine, Newport and Stuart, Nebraska. Applicant will construct distribution systems in each of the communities and provide retail service to consumers therein. The replacement facilities are required to provide increased capacity on the existing lateral to which the longest of the new lateral lines will connect.

Applicant estimates the total requirements of the new service areas as follows:

Year of service	Requirements in Mcf @ 14.73 psia	
	Peak day	Annual
1966	1,875	70,500
1967	2,470	269,900
1968	2,930	335,900
1969	3,080	391,000

Applicant states that due to the size and location of the communities the estimated market will not be able to support the entire investment in branch line facilities required to provide service to them. Applicant will require a contribution from the retail customers in these communities. The contribution will be collected on an Mcf basis from all customers receiving service, over a 10 year period, at an average surcharge of from 20¢ to 28¢ per Mcf.

The total estimated cost of Applicant's proposed construction is $964,500, of which Applicant estimates $598,620 will be excess investment for which contribution will be paid. The initial costs will be paid out of current working capital.

The amount of contribution for each community is computed under a method approved by the Commission in Docket No. CP62-215 (Opinion No. 389, 29 FPC 1058), whereby the ratio between system net plant and system revenues, is multiplied by revenues (3rd year) from the branch line and subtracted from the actual cost of the branch line.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and supplement submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce by Applicant as hereinbefore described and as more fully described in the application and supplement are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the construction and operation of facilities and the transportation of natural gas, all as more fully described in the application and supplement thereto.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, and the transportation of gas authorized in paragraph (A) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 9 months of the date on which this order issues.

(D) Applicant shall receive, as a contribution in aid of construction $133,415 from the customers in Curtis and Farnam, $15,930 from the customers in Potter and $408,120 from the customers in Ainsworth, Atkinson, Bassett, Emmet, Long Pine, Newport and Stuart.

(E) Applicant shall not include in its rate base any amounts it has expended for lateral construction for which it is entitled to receive reimbursement in the future from its retail customers.

(F) Three years and 60 days from the date of first rendering service to each community, Applicant shall file with the Commission a statement showing the actual volumes delivered in the third year compared with the estimate contained herein. If actual volumes exceed by more than 20 percent the estimated volumes, Applicant shall also submit for the Commission's approval a plan for reducing the contributions to conform to actual experience.

OPINION NO. 495

PACIFIC GAS TRANSMISSION COMPANY, DOCKET NOS. CP65-213, CP65-214, CP65-215

OPINION AND ORDER ISSUING CERTIFICATE AND AUTHORIZING IMPORTATION OF NATURAL GAS

(Issued June 15, 1966)*

Syllabus

1. Use of existing pipeline facilities to deliver additional gas will reduce unit cost. P. 1006.
2. Inadequacy of Canadian gas supplies would be relevant in determining whether a new pipeline should be built but not where existing facilities will be used to deliver additional gas. P. 1006.
3. Unlike *Rock Springs*, instant record does not show alternative methods for providing needed gas at rates and under conditions more advantageous than those proposed here. P. 1006.
4. Under circumstances here, benefits to be derived from granting applications exceed any alleged detriment to domestic petroleum industry or its exploration or development. Pp. 1006, 1007.
5. United States-Canadian relations render it unlikely that Canadian gas supplies will be cut off. P. 1007.
6. Mandatory Oil Import Program does not apply to gas importation—in any event, factors which gave rise to the Program do not operate to prevent authorization here. P. 1007.
7. Commission *rejects* suggestion that certificate be conditioned to require renegotiation of producer contracts to eliminate price escalation provisions. Pp. 1007, 1008; 1014–1018.

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*Initial decision appears on p. 1009. Rehearing denied by order issued August 4, 1966. 36 FPC 377. Affirmed, *California Gas Producers Association, et al. v. F.P.C.*, 383 F. 2d 645 (CA9–1967).

8. Whether future gas supplies should be drawn from domestic sources will not be determined here; future Commissions cannot and should not be bound. P. 1008.
9. Rate of return and annual depreciation rate will not be revised here; in general this is better done in a rate proceeding. PP. 1008; 1023.
10. Oral argument is not necessary since this case does not provide a suitable context for debating general policies of importation restrictions. P. 1008.
11. General policy arguments are more properly presented where construction of new facilities is proposed to tap foreign gas supplies rather than where use is to be made of existing facilities. P. 1008.
12. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity and *authorizes* importation of gas.

Raymond N. Shibley, Richard H. Peterson, Malcolm H. Furbush and *John A. Sproul* for Pacific Gas Transmission Company.

Linward Shivers, Waggoner Carr, C. L. Snow, Jr. and *C. Daniel Jones, Jr.* for the State of Texas.

Richard E. Tuttle, J. Calvin Simpson and *Sheldon Rosenthal* for the People of the State of California and Public Utilities Commission of the State of California.

Robert E. Simpson for Washington Utilities and Transportation Commission, Idaho Public Utilities Commission and Public Utility Commissioner of Oregon.

Allan G. Shepard and *Larry D. Ripley* for Idaho Public Utilities Commission.

Henry F. Lippitt, II, for Oil Producer Agency of California, California Gas Producers Association and Jade Oil & Gas Company.

Edward G. Najaiko, C. Frank Reifsnyder and *Jeremiah C. Collins* for El Paso Natural Gas Company.

William I. Powell for Independent Petroleum Association of America.

Roger J. Nichols and *Eric W. Martens* for Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting Gas Supply Company.

George J. Meiburger for Washington Natural Gas Company.

Robert Laughead for the City and County of San Francisco.

John Davenport for Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association and Permian Basin Petroleum Association.

Robert L. Russell and *John J. Keating, Jr.* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

On August 5, 1960, a certificate was issued to Pacific Gas Transmission Company (PGT) authorizing the construction and operation of a 614-mile section of 36-inch pipeline extending from the international boundary at Kingsgate, British Columbia to the Oregon-California boundary.[1] This section of pipeline was one portion of approximately 1400 miles of 36-inch pipeline connecting gas-producing fields in the province of Alberta to the facilities of Pacific Gas and Electric Company (PG&E) in northern California. PGT was originally authorized to deliver an average of 415,000 Mcf of gas per day to PG&E.

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[1] *Pacific Gas Transmission Company,* Docket No. G–17350, 24 FPC 134.

In the present proceeding PGT has applied (Docket No. CP65-213) for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and sale through the same pipeline of an additional 200,000 Mcf of gas per day, delivery of the first additional 100,000 Mcf per day to begin on November 1, 1966 and delivery of the second additional 100,000 to begin on November 1, 1967; the certificate would also authorize construction and operation of certain additional facilities necessary to transmit the additional volumes of gas. PGT is also applying (Docket No. CP65-214) under Executive Order No. 10485, dated September 3, 1963, for a Presidential Permit authorizing the construction, operation and maintenance of the pipeline required at the international boundary to permit the importation of the increased quantities of gas. PGT's third application herein (Docket No. CP65-215) is made under Section 3 of the Natural Gas Act for authorization to import natural gas from Canada.

Notices of intervention were filed by the State of Texas, the People of California and the California Public Utilities Commission (California PUC), the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, the Public Utility Commissioner of Oregon, and the City and County of San Francisco (San Francisco). By order of May 25, 1965, the Commission granted intervention to El Paso Natural Gas Company (El Paso), Texas Independent Producers and Royalty Owners Association, Permian Basin Petroleum Association, West Central Texas Oil and Gas Association (the last three, filing a joint brief on exceptions, will be referred to as TIPRO, *et al.*), California Gas Producers Association, Jade Oil and Gas Company, and Oil Producers Agency of California (the last three, filing a joint brief on exceptions, will be referred to as California Producers), Independent Petroleum Association of America (IPAA), Southern California Gas Company, Southern Counties Gas Company of California, Pacific Lighting Gas Supply Company (the last three, filing a joint brief on exceptions, will be referred to as California Distributors), and The Washington Natural Gas Company.

After a hearing, the presiding examiner's initial decision was issued February 17, 1966, *infra* p. 1009. The examiner would issue PGT a certificate authorizing transportation and sale of the additional quantities of gas to PG&E and authorizing the importation of the gas from Canada. The initial decision states (pp. 1025-1026) that, since the original Presidential Permit issued August 5, 1960[2] granted permission to operate and maintain the facilities necessary to transport the gas across the international boundary, no amendment or additional Presidential Permit need be issued here.

Exceptions to the initial decision have been filed by the State of Texas, TIPRO, *et al.*, IPAA, and California Producers, all of whom oppose the issuance of the certificates sought by Pacific Gas Transmission Company. San Francisco and California PUC would approve issuance of the certificates but have excepted to the examiner's refusal to fix a lower rate of return (6⅛ percent) to PGT than the 6¼ percent allowed. They also except to the examiner's refusal to make a different computation of depreciation as affected by the net salvage which may be realized on the facilities. The Commission staff, while supporting the issuance of the certificates sought by PGT, has excepted to the refusal of the examiner to attach a condition requiring the renegotiation of certain prices to be collected for gas by escalation and to the further refusal of the examiner to require that "any future supplies of natural gas for the Pacific Gas and Electric Company market should come from domestic sources so that there may be some balance between the sources of supply" (Staff Brief on Exceptions, p. 9).

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[2] *Pacific Gas Transmission Company*, Docket No. G-17352, 24 FPC 134, 143, Ordering Paragraph (D).

The regulatory bodies of Oregon, Washington and Idaho filed briefs opposing exceptions, as did California Distributors.

Oral argument has been requested by the State of Texas, TIPRO, *et al.*, IPAA and the California Producers.

We think that the exceptions to the examiner's initial decision must be denied and that the certificates applied for should be issued to the applicant. We are concerned here with already existing pipeline facilities which are not yet being utilized to their fullest capacity. The increased use of the existing pipeline facilities will reduce the unit cost of the gas supplied to California and will also reduce the unit cost of transportation of gas transported for El Paso and destined for the consumers in Washington, Oregon and Idaho. To refuse to issue certificates authorizing the importation, transportation, and sale of this additional gas would mean that some of the capacity of presently existing facilities would remain unused with resultant higher costs to the consumers in four states.

The arguments that have been made as to the inadequacy of the Canadian gas supplies, while they would be relevant to a determination of whether a new pipeline should be built, are not appropriate where existing pipeline facilities will be utilized to make delivery of the gas. Even if the Canadian supplies were shown to be too small to justify the construction of a new pipeline, it would seem desirable to allow already existing facilities to be used to bring out whatever gas may be available. In addition we think that there has been no showing that the Canadian supplies are inadequate. We considered this question before authorizing the construction of these pipeline facilities. We then determined that the sources of supply were sufficient to justify construction of facilities which, with relatively little additional construction, would have capacity to carry all present and proposed gas imports. Nothing has been presented here which would persuade us that our prior determination was erroneous.

Those opposing these applications state that a similar amount of gas could be made available by domestic producers and urge that as a matter of policy the importation of gas should be restricted. It is urged that the importation of natural gas has a depressing effect on the domestic industry, especially domestic exploration, and that domestic supplies should be utilized wherever possible in order to encourage domestic exploration and development as well as to benefit the American industry.

Unlike the *Rock Springs* proceeding,[8] the record in this case does not demonstrate that alternative methods exist for providing the needed volumes of additional gas at rates and under conditions more advantageous than those which will be achieved by certification of PGT's instant application.

The Commission will consider carefully in every case the effect of importations of natural gas upon the domestic industry and upon the exploration and development which may be needed to develop future gas supplies. In the circumstances of the present case, where the need of the market for additional gas is established, where the basic facilities to procure the Canadian gas have already been constructed, where no competing application for transportation and sale from an alternative domestic source has been filed by any pipeline, and where there will be a reduction in unit cost of service which will benefit the consumers of four states, we think the benefits to be derived from granting these applications far exceed any alleged detriments to the domestic petroleum industry or its exploration and development program. There appears to be little doubt that California will absorb all the gas which producers in California can make available to pipelines there. While ample supplies of gas are available in Permian Basin and other areas in the southwest, the facilities for bringing this gas to California in the amounts desired by consumers are not now available, nor can they be available for some time.

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[8] *El Paso Natural Gas Co.*, 30 FPC 77 (July 12, 1963).

The suggestion is made that the Canadian supplies may be cut off and are therefore unreliable. We think that the close relationship between the United States and Canada renders it unlikely that this sort of difficulty will arise. Also, this is an argument more properly advanced at the time of an application to construct new pipeline facilities. That a supply may be cut off in the future is not an argument against using existing facilities to bring out gas up to the time any cut-off occurs, although it may be an argument against investing in new facilities.

We have previously considered the contention here advanced that the Mandatory Oil Import Program would require the denial of authorization to import natural gas for domestic use. *The Montana Power Company*, Opinion No. 486, 35 FPC 191 at pp. 194, 195. We conclude that the Mandatory Oil Import Program does not apply to the importation of natural gas. In any event, in the circumstances of this case, the factors, even if otherwise applicable, which gave rise to the Program, do not operate to prevent the authorizations sought by PGT.

Staff has suggested that the certificates be conditioned to require that Canadian producers supplying the gas to Canadian pipelines for transportation on a cost-of-service basis to PGT should submit to renegotiation of their contracts to eliminate price escalation provisions (based on weighted average field prices) for protection against possible price increases which would increase the cost of gas to PGT and, ultimately, the American consumer. Such a condition was not imposed when the present pipeline facilities were authorized, although 98 percent of the Canadian producers' contracts then contained such escalation provisions. See *Pacific Gas Transmission Company*, 24 FPC 134, 137. Later contracts do not contain these escalation provisions. About 54 percent of the reserves supporting the present proposed expansion were acquired under contracts without such escalation provisions. (The remaining 46 percent were acquired by extensions of existing contracts to cover reserves added by additional development in already dedicated fields). New reserves are acquired under contracts which do not contain such escalation clauses.

There has been a decline in the percentage of reserves covered by the escalation clauses in question, and it appears this decline will continue. A majority of the additional gas that is the subject of the present applications will be furnished under contracts which do not contain these escalation clauses, and this will have a retarding effect upon any potential price escalations. To require renegotiation of the producers' contracts, which we cannot directly control, might result in delay in obtaining the desired supplies of gas. There will be an immediate saving to American consumers when this gas is made available, and the potential price increase is some time in the future, if it occurs at all. We agree that it would be preferable if this type of escalation clause were not included in producer contracts, and its presence in contracts for new supplies would clearly be a factor in our consideration of any application for certification of pipeline facilities. In the circumstances here stated, however, we think the examiner was correct in his conclusion that the suggested condition not be included.

Staff has also suggested that it be here determined that future supplies of gas be drawn from domestic sources. We cannot bind future Commissions in their determinations as to what may best serve the public convenience and necessity in this regard, nor would it be wise to do so if we could. This is a question which should be passed upon in the light of the circumstances which may be presented at the time of a particular application to make use of particular reserves. Accordingly, it will not be predetermined here.

California PUC and San Francisco urge that the rate of return established in the 1960 certificate proceeding should be reduced from 6¼ percent to 6⅛ percent. The examiner and the Commission Staff are of the view that any revision of the rate of return should be dealt with in a rate proceeding. While there are occasions where rates may be dealt with in a certificate proceeding, in general it is preferable that the prompt issuance of a certificate not be delayed by hearing and consideration of rate revision issues. We think that there has been no such showing as would lead us to adjust the established rate of return in this proceeding. This ruling is without prejudice to any determination we may be called upon to make in a later proceeding.

For the same reasons, we approve the examiner's refusal to revise the annual depreciation rate and to reduce the dollar value of the plant to which depreciation is applied by 10 percent, the alleged net salvage on PGT's line.

We think that oral argument is not necessary in this case. In so ruling, we recognize the general question of policy as to whether restrictions should be placed upon the importation of natural gas, and, if so, what these restrictions should be, are matters of the greatest importance. This case does not, however, provide a suitable context in which to debate such general policies. General policy arguments would be more properly presented where the construction of new facilities is proposed to tap foreign gas supplies, rather than where the applicant seeks only to make use of existing facilities already authorized. The other questions which have been raised appear to have been fully presented by the briefs of the participants, and little benefit would be derived from oral argument as to them. The motions for oral argument will be denied.

The Commission finds:

(1) The applicant, Pacific Gas Transmission Company, is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore, a "natural-gas company" within the meaning of the Natural Gas Act. See *Pacific Gas Transmission Company*, 24 FPC 134, Finding (5) p. 140.

(2) The additional facilities proposed by Pacific Gas Transmission Company hereinabove referred to and more fully described in the Pacific Gas Transmission Company applications and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Pacific Gas Transmission Company has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.

(4) The additional facilities proposed by Pacific Gas Transmission Company are adequate to render the supplemental service herein proposed.

(5) Pacific Gas Transmission Company is financially able to construct and operate the proposed additional facilities estimated to cost $13,857,000.

(6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company.

(7) The Pacific Gas Transmission Company plan for rendering the additional service to Pacific Gas and Electric Company is feasible.

(8) Pacific Gas Transmission Company is able and willing, subject to the terms of this order, properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission promulgated thereunder.

(9) The construction and operation of the facilities proposed by Pacific Gas Transmission Company and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, and a certificate of public convenience and necessity should be issued therefor.

(10) The proposed importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Natural Gas Act.

(11) The importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company in its application is appropriate and consistent with the public interest and should be authorized upon the terms and conditions of this order.

(12) The terms of the existing Presidential Permit issued to *Pacific Gas Transmission Company* on August 5, 1960, 24 FPC 134, sufficiently provide for the proposed additional imports and no amendment or additional Presidential Permit is required.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to the Pacific Gas Transmission Company authorizing it to import from Canada an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1966, and an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1967 for transportation and sale to the Pacific Gas and Electric Company for resale, all as more fully described in the applications filed herein and the evidence received in these proceedings.

(B) The authorizations granted to Pacific Gas Transmission Company under paragraph (A) hereof are subject to the terms and conditions imposed upon the authorizations granted to Pacific Gas Transmission Company, *et al.*, by the order of the Commission issued August 5, 1960, 24 FPC 134, insofar as said terms and conditions are applicable, and the said terms and conditions shall apply with respect to the additional gas imported, transported and sold under the authorizations here granted.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION FOR A PRESIDENTIAL PERMIT AND UPON APPLICATIONS UNDER SECTIONS 3 AND 7 OF THE NATURAL GAS ACT

(Issued February 17, 1966)

FRAZEE, *Presiding Examiner:*

This proceeding concerns applications filed on January 12, 1965, and amended on March 31, 1965, by the Pacific Gas Transmission Company (PGT) seeking the requisite certificates, import and Presidential Permits, which would authorize it to install, construct and operate the additional facilities[1] necessary to import an additional 200,000 Mcf[2] of natural gas per day from reserves dedicated by producers in the Province of Alberta, Canada. PGT also seeks the authority to sell and deliver these additional imported volumes of natural gas to the Pacific Gas and Electric Company (PG&E) at the Oregon-California border, from which point the gas will be transported, distributed and sold by PG&E to its customers in central and northern California.

On May 25, 1965, the Commission issued an order herein granting interventions,[3] fixing dates for the filing of prepared testimony and supporting exhibits[4] and for a prehearing conference.[5]

At the prehearing conference held on July 22, 1965, dates were fixed for the filing of written motions, and replies thereto, directed to the admissibility of the filed prepared written testimony and supporting exhibits. The formal hearing was scheduled to convene on September 15, 1965.[6]

Numerous motions and replies thereto were filed, which were directed to the admissibility of all or portions of the prepared testimony and supporting exhibits filed by the State of Texas, the Permian Basin Petroleum Association, the People of the State of California and the Public Utilities Commission of the State of California; also to certain testimony offered jointly by the Oil

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[1] On August 5, 1960, the Commission in *Pacific Gas Transmission Company*, 24 FPC 134, authorized PGT to construct and operate a 614-mile section, of a 1400-mile line, of 36-inch pipe extending from the Canadian-U.S. border (near Kingsgate, British Columbia) to the Oregon-California border to deliver to PG&E a daily contract quantity of 415,000 Mcf and a maximum daily demand of 454,000 Mcf of natural gas to be imported from the Province of Alberta, Canada, and delivered to PG&E for resale and distribution in its California market area. The cost of this line and its appurtenant facilities amounted to $116,940,000 (Ex. 45). The various regulatory agencies recognized, when they authorized the construction and operation of this 36-inch line, that it was oversized for the throughput of the initially certificated volumes of 415,000 Mcf per day. However, PGT there indicated that future authorizations would be sought to import additional volumes of natural gas to utilize the full capacity of the line.

[2] The 200,000 Mcf per day would be delivered to PG&E in two steps; the delivery of the first 100,000 Mcf/d would start on November 1, 1966 and the second 100,000 Mcf/d on November 1, 1967.

[3] Notices of intervention were filed by:

1. The State of Texas.
2. The People of the State of California and the Public Utilities Commission of the State of California.
3. The Washington Utilities and Transportation Commission.
4. The Idaho Public Utilities Commission.
5. The Public Utility Commissioner of Oregon.
6. The City and County of San Francisco.

Petitions to intervene were filed by:

1. El Paso Natural Gas Company.
2. Texas Independent Producers and Royalty Owners Association.
3. Permian Basin Petroleum Association.
4. West Central Texas Oil and Gas Association.
5. California Gas Producers Association.
6. Jade Oil and Gas Company.
7. Independent Petroleum Association of America.
8. Oil Producers Agency of California.
9. The Pacific Lighting Companies.
10. The Washington Natural Gas Company.

[4] Applicant, PGT, to serve its prepared testimony and supporting exhibits on all parties on or before June 21, 1965. The Intervenors, and the Staff of the Commission, to serve any answering testimony and supporting exhibits on all parties on or before July 15, 1965.

[5] On July 22, 1965.

[6] Tr. 1, p. 128, ln. 21.

Producers Agency of California, the California Gas Producers Association and the Jade Oil and Gas Company. These motions to exclude the proffered prepared direct testimony and supporting exhibits from the record herein were sustained.[7] However, each of the parties was permitted to make an offer of proof[8] as provided by Section 1.28(b) of the Rules of Practice and Procedure of the Commission.

A hearing was held at which an opportunity was afforded all parties desiring to do so to offer relevant and material evidence, and a substantial volume of such evidence was offered and received. Further, those desiring to do so were permitted to file briefs.

This transportation of natural gas from the producing fields of Alberta, Canada, to the consumers of PG&E in California, is an international project. The basic original construction, as previously mentioned, partly resulted from United States authorizations obtained by PGT in 1960.[9] The combined project operates through the joint effort of the following five internationally participating companies. These participants and their respective functions are described as follows:

1. The Alberta and Southern Gas Co. Ltd. (Alberta and Southern), incorporated under the Companies Act of Alberta, is a wholly owned subsidiary of PG&E. Its function is to purchase pipeline quality natural gas from producers in the Province of Alberta and arrange for its transportation in Alberta and through British Columbia to the International Boundary where the gas is sold and delivered to PGT.

The National Energy Board of Canada authorized Alberta and Southern, in the original phase of this international project, to export 458,750 Mcf of natural gas per day.

Alberta and Southern owns no transmission facilities. Its plant consists of physical property and equipment valued at $2,738,000 in 1964, which would not be increased as a result of the proposed increase in imports.

2. The Alberta Gas Trunk Line Company Limited (Trunk Line) was incorporated by a Special Act of the Alberta Legislature. Its function is the gathering and transporting, within the Province of Alberta, of the natural gas purchased at the tailgate of processing plants by Alberta and Southern. Trunk Line has constructed, and it operates, the facilities necessary to gather and transport[10] the natural gas authorized to be exported from the Province of Alberta and the Dominion of Canada and imported into the United States in *Pacific Gas Transmission Company*, 24 FPC 134. It will construct and operate the facilities required to transport the additional 200,000 Mcf per day

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[7] Tr. 2, pp. 135–144.

[8] Tr. 8, pp. B and 993–995, the excluded testimony of the People of the State of California and the Public Utilities Commission of the State of California was marked as Exhibits 36 and 37 and rejected, but accepted as an offer of proof.

Tr. 11, pp. A and 1533–1534, the excluded testimony jointly sponsored by the Oil Producers Agency of California, the California Gas Producers Association and the Jade Oil and Gas Company was marked as Exhibit 52 and rejected but accepted as an offer of proof; also at Tr. 12, pp. A and 1739, 1760 a letter with attachments was marked as Exhibit 64 and rejected, but accepted as an offer of proof.

[9] For a discussion of the "Identity and Short Designation of Participants and Other Interests" see *Pacific Gas Transmission Company*, 24 FPC 144, 145 (the Examiner's decision) and the "Producers, Pipelines, and Public Authorities in Canada" at 24 FPC 134, 136 (the Commission Order).

[10] Trunkline's facilities consist of approximately 222 miles of receiving and delivery laterals and about 350 miles of main line extending from Alberta to the British Columbia border. Its investment in these in place facilities presently amounts to $82,638,000 (Ex. 45).

purchased by Alberta and Southern for export to the United States, which is the subject of these proceedings. Trunk Line has no corporate connection with any other company participating in this project, except that Alberta and Southern holds one share of Class B Group II common shares of Trunk Line.

3. The Alberta Natural Gas Company (Alberta Natural) was incorporated and authorized by a special act of the Parliament of Canada to transport natural gas in interprovincial and foreign commerce. It currently transports natural gas owned by Alberta and Southern and by Westcoast Transmission Company Limited (Westcoast) from a point in Alberta near the Alberta-British Columbia boundary through British Columbia to the International Boundary near Kingsgate, British Columbia. It will construct and operate the additional compressor facilities[11] necessary to transport the additional 200,000 Mcf per day which is the subject of this hearing. Two-thirds of the common stock of Alberta Natural is owned by PGT and the remaining one-third is owned by the public.

4. PGT, the applicant herein, was incorporated in August 1957, in the State of California (Exhibit 2) and has since been authorized to do business in the States of Oregon, Idaho and Washington. It is a "natural-gas company" within the meaning of that term under the Natural Gas Act. See *PGT*, 24 FPC 134, Findings (5), p. 140. It owns and operates the 614-mile section of the project pipeline from the International Boundary near Kingsgate, British Columbia, to the California-Oregon border which was authorized by this Commission in *PGT*, 24 FPC 134. PGT's actual investment costs for the construction of this line and its appurtenant facilities amounted to $116,940,000. PGT here seeks authorization to install, construct and operate the following additional facilities which, it alleges, will be required to transport the additional 200,000 Mcf per day:

(1) 8,250 additional horsepower of compression at its compressor station No. 4 near Sandpoint, Idaho.

(2) A new 10,000 horsepower compressor station No. 6 near Rosalia, Washington.

(3) A new 10,000 horsepower compressor station No. 9 near Ione, Oregon.

(4) A new 16,000 horsepower compressor station No. 11 near Madras, Oregon.

(5) A new 8,000 horsepower compressor station No. 14 near Bonanza, Oregon.

(6) Additional metering facilities at the existing metering station at the Oregon-California border.

(7) A maintenance base near Candon, Oregon.

(8) A gas control computer in its office building in Spokane, Washington.

(9) It will also change its impellers at its station Nos. 8 and 13, near Wallula, Washington and Diamond Junction, Oregon, respectively.

The estimated cost of the foregoing proposed construction is $13,857,000.

PGT purchases its gas from Alberta and Southern at the International Boundary pursuant to a contract dated January 31, 1961, as amended, and sells gas at the California-Oregon border to PG&E pursuant to a tariff on file with the Federal Power Commission. PGT also presently transports about 150,000 Mcf per day of an authorized maximum of 300,000 Mcf per day of natural gas, under contract as a common carrier, for the El Paso Natural

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[11] Alberta Natural consists of 106 miles of pipeline in which it presently has an investment of some $32,637,000. Additional expenditures will be necessary for the facilities here requested.

Gas Company (El Paso) to points on the PGT line in the States of Washington, Idaho and Oregon as specified by El Paso and authorized by this Commission in *PGT*, 24 FPC 134. This gas is purchased by El Paso from Westcoast at the International Boundary.

The final portion of this international pipeline is owned and operated by PG&E and consists of 298 miles of main line beginning at a point of connection with PGT on the Oregon-California boundary and extending to Antioch, California. This section of the line originally cost $54,250,000. It is entirely within the State of California.

CANADIAN GAS SUPPLY

The applicant, PGT, obtains its entire gas supply from Alberta and Southern under an existing cost-of-service contract (Exhibit 4). No changes, except to increase the volumes, will be made in this contract as a result of the increase in imports herein proposed. The applicant, PGT, presented a gas supply witness who testified concerning the adequacy of the gas reserves dedicated to Alberta and Southern and the deliverability of these reserves. This witness estimated the total recoverable gas reserves of pipeline quality gas available to Alberta and Southern on November 1, 1964 to be 5,509,340 million cubic feet at 14.73 psia at 60 degrees Fahrenheit (Exhibit 1, page 1). His testimony classified these reserves as follows:

	Million cubic feet
Under contract	4, 574, 411
Under option	553, 513
Subtotal	5, 127, 924
Other available	381, 416
Total	5, 509, 340

The reserves "under contract" were attributed to acreage covered by contracts between producers in the Province of Alberta, Canada, and Alberta and Southern. "Under option" referred to those reserves underlying acreage committed to Alberta and Southern by options permitting it to purchase gas on specified definite conditions. It was stated that several of the fields have proved uncommitted reserves lying outside of the contract or option acreage. These reserves the witness classified as the "other available." The witness stated that, in his classification of reserves, he had not included in the "other available" category any reserves for those fields from which a competing pipeline is purchasing gas. From the testimony of this witness it was shown that the reserves presently available to Alberta and Southern are estimated to be sufficient to meet its estimated delivery requirements[12] for 17 years from

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[12] The total delivery requirements of Alberta and Southern to PGT and to Montana Power Co. (24 FPC 134) were shown in Exhibit 1, and at Tr. 166, also at page 9 of the Staff Brief, to be:

	Annual	Daily
1965	164, 900	451. 8
1966	164, 900	451. 8
1967	206, 000	564. 4
1968	248, 900	681. 9

Footnote continues on following page.

and after November 1, 1964, and to have a life index of 23.1 years (Exhibit 1, page 5). It was further indicated that, considering only the proved contracted reserves which have a life index of 19.2 years, Alberta and Southern would have sufficient gas to meet its estimated delivery requirements for 13 years from and after November 1, 1964[13] (Exhibit 1, page 4). The adequacy of the gas supply to support the additional deliveries to PGT was not questioned. This reserve witness did not utilize a specific cutoff pressure although he estimated that generally the wells would produce up to 25 percent of their open flow. Eventually the shut-in well pressure will be less than the pipeline pressure. At this point compression will become necessary, which will increase the cost-of-service to the applicant and to the ultimate consumer.

CANADIAN GAS SUPPLY CONTRACTS

PGT, in support of its application for a certificate of public convenience and necessity submitted copies of the various gas purchase agreements utilized by Alberta and Southern to purchase gas from Alberta producers (Exhibit 6). Initially, in acquiring the gas for the project certificated at 24 FPC 134, Alberta and Southern utilized three types of contracts[14] and the gas acquired thereunder fell into the following categories:

Contract forms	*Percentage of gas supply (percent)*
A	77
B	21
C	2

Contract Forms A and B have the same schedule of prices. Contract Form C is used in the purchase of casinghead gas and the schedule of prices for such gas is lower (Exhibit 6, tr. 325). It was noted by the Commission in

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The commitments of Alberta and Southern were shown (Exhibit 5; Tr. 336, Staff Brief p. 9) to be:

The Montana Power Company

	Maximum daily demand (Mcf)	Daily contract quantity (Mcf)
1965	32, 600	30, 000
1966	44, 000	40, 000
1967	44, 000	40, 000
1968	55, 000	50, 000

Pacific Gas Transmission

	Maximum daily demand (Mcf)	Daily contract quantity (Mcf)
1965	454, 000	415, 000
1966	552, 000	515, 000
1967	665, 000	615, 000
1968	665, 000	615, 000

[13] The Staff, at page 10 in its brief, states "Alberta and Southern can meet its total proposed requirements for a period in excess of 13 years as of January 1, 1965. Predicated upon its reserves actually under contract Alberta and Southern has shown a deliverability life of approximately 13 years (Ex. 1, p. 4)."

[14] Contract Forms A, B and C were discussed by Presiding Examiner Weston at 24 FPC 134, 160 and were approved by the Commission in its order, *supra*. These gas purchase contracts are set forth in summary form, and in full, Exhibit 6 on this record.

24 FPC 134, 137 "* * * that Alberta and Southern has entered into option agreements with several major producers covering areas containing both established and prospective reserves of great size. These agreements commit the producers to sell large additional volumes of gas at the same price as those in the present contracts, *when and as needed for the contemplated future expansion of this project.*" [Italic supplied.] Approximately 80 percent of the additional volumes here sought to be imported will come from the same fields from which the presently certificated import volumes are drawn. The reserves in these fields have increased by reason of additional development in areas covered by the original contracts and in other nearby areas not covered by the original contracts. The reserve appreciation in the fields covered by the original contracts[15] accounts for 46 percent of the reserves for the presently proposed expansion. The remaining 54 percent of the reserves are covered by a new form of contract—Form D—which provides for a set schedule of prices established for the entire term of the contract and not subject to renegotiation. The 54 percent of the reserves are located in fields from which Alberta and Southern does not presently purchase gas. The gas supplies for the initial, and this proposed supplemental, projects will, when certificated, fall into these new categories:

Contract forms	*Percentage of gas supply (percent)*
A	71
B	15
C	1
D	13

The pricing provisions in contracts Form A and Form B each contain in addition to fixed price escalations, certain renegotiation provisions beginning with the pricing period commencing July 1, 1968 and at each five-year interval thereafter during the term of the contract. These renegotiation provisions were eliminated from contract Form D under which gas purchases are currently being made.

As to the probable effect of these renegotiations on prices after July 1, 1968, the Vice President and General Manager of Alberta and Southern testified that export buyers of gas in Alberta were presently contracting for gas at prices both higher and lower than those being paid by Alberta and Southern but, in his opinion, the higher prices paid by others for export gas would not necessitate an upward renegotiation in Alberta and Southern's price. He does expect a request from the producers for a renegotiation and, if an agreement is not reached between the producers and Alberta and Southern as to price, the matter is then referred to arbitrators whose findings are final and binding on both the buyer and the seller.

The witness testified that the Province of Alberta has a statute which provides the authority for the regulation of prices paid producers for natural gas but that he knew of no regulations issued thereunder by Alberta regulatory authorities for the establishment of ceiling prices for the sale of natural gas for export.

A witness for the Texas Independent Producers and Royalty Owners Association (TIPRO), an intervenor, testified, in rebuttal, that he had personally negotiated and executed contracts for the sale of natural gas produced by him in Texas and in Alberta. It was his opinion the Form A and Form B contracts used by Alberta and Southern are "open-ended;" that renegotiation will inevitably result in prices higher than those specified in the periodic escalation schedules but that there was no way at this time to determine what the price will be following renegotiation.

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[15] These reserves are acquired by operation of the terms of the original contract and the increase in daily contract quantity is simply recorded by an exchange of letters to that effect between the producer and Alberta and Southern, the buyer.

When it issued the original certificate on August 5, 1960, authorizing this project in 24 FPC 134 the Commission had this identical problem before it—98 percent of the gas there authorized to be imported was purchased under contracts Form A and B—and it said, at page 137:

> Beyond these limiting factors, there remains the primary responsibility of the Canadian authorities to regulate producer and pipeline rates in such a way as to insure that the mutual benefits of the project as a whole will continue. A careful review of the Canadian legislation, including the National Energy Board Act, the Alberta Pipe Line Act, and the Alberta Gas Utilities Act, and the determinations made thereunder with regard to this project, demonstrates that the Canadian regulatory authorities now have a comprehensive rate and certificate jurisdiction at least equal to our own, and broad enough, in letter and spirit, to give effect to the principles of international comity and mutual responsibility on which the continuing success of this project ultimately depends. This legislation embodies the same "just and reasonable" standards as are found in the Natural Gas Act and guarantees that the American and Canadian consumer will be treated alike.

Since the issuance of this order at 24 FPC 134, the Commission has determined that indefinite pricing escalation provisions of certain types in domestic producer contracts for the sale of natural gas in interstate commerce are contrary to the public interest. *The Pure Oil Co.*, 25 FPC 383, *affirmed*, 299 F. 2d 370; See FPC Order No. 174–B, 13 FPC 1576; FPC Order No. 232, 25 FPC 379, as amended by Order No. 232–A, 25 FPC 609; FPC Order No. 242, 27 FPC 339, and Section 154.91, *et seq.*[16] of the Commission's Regulations under the Natural Gas Act; also *F.P.C.* v. *Texaco Inc.*, 377 U.S. 33; *The Atlantic Refining Co.*, 32 FPC 17.

These Form A and Form B contracts contain another indefinite pricing provision which requires the purchaser, commencing with the year 1968, to give annual written notice to the seller showing the purchaser's weighted average cost per Mcf of gas purchased from fields located in whole or in part in Alberta. Should the buyer's weighted average cost per Mcf be higher than the price being paid to the seller then, in the following year, the buyer must make an appropriate price adjustment to seller to bring his price up to purchaser's weighted average cost for the previous year.

In accordance with the foregoing "open-ended" pricing provisions in the Form A and Form B contracts it was said by the Alberta and Southern gas supply witness that 86 percent of the contracts which underlie the gas supply after this proposed expansion would be renegotiated in 1968. This witness was of the opinion, however, that, should a higher price for some producers become effective as the result of renegotiation, the remaining producers would not subsequently invoke the weighted average price provision to obtain an increase in price per Mcf. The witness would concede, however, should an increase in price result from renegotiation it could trigger the weighted average price provision which would result in a general price increase. Since Alberta and Southern sells this gas to PGT on a cost-of-service basis which is reflected in the monthly billing statements, the impact of any price increase would be immediate.

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[16] Particularly Section 154.93(c) which defines one part of the "permissible" provisions as being, "Provisions that, once in five-year contract periods during which there is no provision for a change in price to a specific amount (paragraph (b) of this section), change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and, are in the area of the price in question * * *"

Alberta and Southern have, what they refer to as, a "postage stamp" practice in negotiating for natural-gas reserves in Alberta. Under this practice each producer throughout the Alberta and Southern purchase system is paid the same price for similar gas. Thus, when additional gas is discovered the producer knows what price Alberta and Southern will pay for it. This lends incentive to a search for and the production of natural gas.

The foregoing renegotiation provisions contained in the Form A and Form B contracts are, quite obviously, contrary to the indefinite pricing provisions of Section 154.93 of the Commission's Regulations under the Natural Gas Act. Since Federal Power Commission jurisdiction does not extend to the Alberta and Southern gas purchase contracts with producers in Alberta, Canada, the Staff at pp. 30, *et seq.*, in its brief, discuss three alternative proposals in an attempt to resolve, or minimize, the possibility of a price increase as a result of contract renegotiations. The Staff proposals are:

(1) Grant the certificate to PGT.

(2) Deny the application.

(3) Condition the certificate to require Alberta and Southern, in the forthcoming renegotiations, to negotiate for the conversion of the Form A and Form B contracts to the new Form D contract.

Alberta and Southern appears to be fully aware of the possibility of price increases upon renegotiation and have therefore developed a new Form D contract which contains none of the renegotiation nor weighted average price increase provisions. Approximately 54 percent of the reserves supporting the present proposed expansion were acquired under the Form D contract. Under this contract there is a fixed schedule of prices for the life of the contract. (Exhibit 6). The remaining 46 percent of the reserves for this project were acquired by extensions of the original Form A and Form B contracts for reserves added by additional development in the already dedicated fields.

Alberta and Southern now uses the Form D contract exclusively for the purchase of new reserves. This contract appears to comply with Section 154.93 of the Commission's Regulations under the Natural Gas Act. The Commission, when it issued PGT its original certificate on August 5, 1960 (24 FPC 134), had these same Form A and Form B contracts under consideration and it there said at page 137:

> * * * The most important of these costs is the cost of purchased gas reflecting Canadian producer prices. In this connection it is worth noting that Alberta & Southern has entered into option agreements with several major producers covering areas containing both established and prospective reserves of great size. These agreements commit the producers to sell large additional volumes of gas at the same prices as those in the present contracts, when and as needed for the contemplated future expansion of this project. These reserve acreage contracts should have an important stabilizing effect on field prices in the foreseeable future * * *

The "additional volumes" of gas referred to in the above quotation account for 46 percent of the gas for this expansion project.

The Commission in 24 FPC 134, 137, commenting on the Alberta Gas Utilities Act, recognized it as being:

> * * * considerably broader and more detailed than the comparable provisions of the Natural Gas Act and its clarity and scope with reference to gas producers and processors should enable the Alberta Board of Public Utility Commissioners to avoid many of the difficulties we have experienced.

The Commission said, *supra*, it placed full faith and confidence in the Canadian authorities to determine and fix just and reasonable rates. The Alberta producers, by agreeing to sell additional supplies of gas for export to the U. S. under Alberta and Southern's Form D contract, and Alberta and Southern, in developing and using this contract instead of the previously used Form A and Form B contracts, each demonstrate their desire "to give effect to the principles of international comity and mutual responsibility" to the end that the consumer of natural gas will be protected against "unjust and unreasonable" prices. A certificate of public convenience and necessity will therefore be issued to PGT unconditioned insofar as the gas supply contracts are concerned.

FIELD PRICE OF GAS IN ALBERTA, CANADA

Initially the base price for pipeline quality gas was 13.50 cents per Mcf.[17] This initial base price has, under the fixed escalation provisions of the Form A and Form B contracts, increased to 17.0 cents per Mcf and it will increase a further 0.25 cents per Mcf on July 1, 1968 so that on that date the base price will be 17.25 cents per Mcf for pipeline quality gas of approximately 1080 Btu content. The new reserves acquired for this proposed expansion under the new Form D contract were obtained at an initial base price of 17.0 cents per Mcf. Therefore, when the gas commences to flow for this expansion of imports project, it will cost at the tailgate of the processing plant the same price per Mcf as is being paid currently for the initially certificated gas, namely, 17.0 cents per Mcf. The record here shows all of the gas purchased in Alberta by Alberta and Southern is of pipeline quality and delivered at the tailgate of the processing plants at a pressure base of 900 to 1000 psig. The revenues obtained from the sale of the by-products extracted from the raw gas stream entering the processing plants are retained by the producers since they own the gathering system and the processing plants.

OREGON-CALIFORNIA BORDER GAS PRICE

PGT's 36-inch pipeline was originally certificated with full knowledge it was oversized for the initial volumes to be transported, however, it was then understood the throughput capacity could be increased substantially at reasonable cost. In this proceeding the applicant seeks to take advantage of this additional throughput capacity. A PGT witness sponsored Exhibit 19 showing the cost of Canadian gas delivered to PG&E at the Oregon-California border delivery point. The following tabulation[18] shows the average cost in cents per Mcf of gas delivered to PG&E by PGT under its cost of service tariff:

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[17] For a detailed discussion of the field prices of gas to Alberta and Southern see *PGT*, 24 FPC 134, 160–161, Presiding Examiner Weston's decision.

[18] From Exhibit 19, pp. 2 and 3, as modified at Tr. 1306, *et seq.* to give effect to the use of the double declining balance depreciation for tax purposes on the facilities proposed for installation in 1966 and 1967.

	Without the proposed expansion ¢ per Mcf	With the proposed expansion ¢ per Mcf	Incremental cost of the additional volumes ¢ per Mcf
1967	34.15	31.04	----------
1968	34.58	30.73	22.60
1969	34.49	30.91	23.36
1970	34.26	30.83	23.60

The certification of the increased volumes will materially decrease the delivered unit price of gas beginning with the year 1968 at the Oregon-California border from 34.58 cents to 30.73 cents, a reduction of 3.85 cents per Mcf, as illustrated in the above tabulation.

Natural gas is also transported on a cost-of-service basis by PGT for El Paso and its Canadian supplier, Westcoast. The El Paso gas is distributed in the Pacific Northwest States. The 1968 estimated transportation charge for the El Paso gas, without these additional volumes is estimated to be 7.10 cents per Mcf. However, with the increased volumes here sought, the 1968 transportation charge to El Paso would decrease to 5.76 cents per Mcf, a reduction of 1.34 cents per Mcf.

The following tabulation shows a comparison of the transportation charges for the El Paso gas:

	Without the proposed expansion [19]	With the proposed expansion [19]	Estimated reduction in transportation costs [20]
1966	6.17¢	6.08¢	[21] $46,000
1967	6.91¢	5.80¢	564,000
1968	7.10¢	5.76¢	681,000
1969	7.05¢	5.80¢	639,000
1970	6.95¢	5.85¢	564,000

[19] Tr. 1341, ln. 3, *et seq.*

[20] Tr. 1342, ln. 20, *et seq.*

[21] For two month's period November 1, 1966 to December 31, 1966.

The reduction in transportation charges to El Paso, as shown above, would amount to $2,494,000 during the period 1966–1970.

A petition to intervene was filed by El Paso on February 15, 1965; a supplemental petition to intervene was filed on May 7, 1965. In these El Paso alleged, *inter alia*, this Commission has authorized it to sell and deliver natural gas to PG&E at the Arizona-California border near Topock, Arizona, a firm maximum contracted daily demand of 1,025,000 Mcf (at 14.9 psia) under its Rate Schedule G; also, that this Commission authorized PGT to transport for El Paso in the United States, up to 150,000 Mcf per day of Canadian gas which El Paso purchases from Westcoast. By agreement between PGT and El Paso these volumes may be increased. El Paso was permitted to intervene (by order issued herein on May 25, 1965). At page 49, 1n. 20, of the Transcript, counsel for El Paso stated:

> Mr. REIFSNYDER. El Paso has no application in this case; El Paso has no unfilled capacity by which, we could make deliveries to Pacific Gas and Electric Company. Therefore, we are not a competing applicant in this case, it has not been El Paso who offered any testimony.

We have not filed any prepared testimony. That is all I think I can contribute.

PRESIDING EXAMINER. But El Paso did file a petition to intervene.

Mr. REIFSNYDER. That is correct.

PRESIDING EXAMINER. So El Paso is a party?

Mr. REIFSNYDER. That is right. We are a participant in the proceeding under the Commission's rule, and our petition to intervene clearly sets forth our interest in this proceeding.

Much ado was provoked in several briefs from a comparison, by a PGT witness on cross-examination, of the prices for natural gas delivered at the California border for delivery to PG&E by El Paso and PGT. No indication can be drawn, from the foregoing colloquy between the Examiner and counsel for El Paso, that El Paso either can or has the desire to make a proposal to supply the increased requirements of PG&E. El Paso was consistent in reiterating this position throughout the course of the hearing. (Tr. p. 425 and p. 1377.)

ECONOMIC FEASIBILITY

The economic structure of this entire international operation is geared to cost-of-service arrangements between the individual companies. These arrangements are designed to cover operating costs of the several companies and to realize a reasonable return on the depreciated plant investment.[22] There was no issue on this record in regard to the economic feasibility of the proposed project. As the Staff says in its brief, for an increase of approximately $30,000,000, which is slightly more than 10 percent of the total initial capital investment for the over-all international project, 50 percent more gas will be delivered to PG&E. Thus the feasibility of the entire project, because of the increased additional volumes that can be delivered for the 10 percent increase in capital investment, will redound to the benefit of the consumer in lower rates.

FINANCING

The estimated cost to PGT for additional facilities is $13,857,000. This investment will be financed from funds on hand on January 1, 1964, and from funds generated from operations and from bank loans. It was estimated these bank loans would be repaid in the three years period 1968 through 1970. There was no issue concerning the ability of PGT to finance the proposed expansion or as to the effect this financing would have on the PGT over-all financial plan.

MARKETS AND SUPPLY

There is no question PG&E will require large volumes of gas in the immediate future to supply its rapidly expanding market demand. The source of this additional supply of gas generated some problems to be considered.

The California Gas Producers Association, the Oil Producers Agency of California and the Jade Oil and Gas Company (hereinafter referred to as the California Companies), argue that PG&E, in its estimates of the future availability of California produced gas, fails or is unwilling to make, what the California Companies term "a realistic" estimate of the future availability of northern California gas. The California Companies claim their future exploration, together with the development of present fields, will be more than sufficient to supply the increased market demand of PG&E for at least one year, therefore the certification to import the additional quantities should be deferred for at least one year. The California Companies also complain about the terms of the contracts offered them by PG&E for the purchase of their gas production. They allege the contracts are not uniform since some require a 2 to 1 peak to minimum delivery while others require 3 to 1 and some require as much as 5 to 1. When the producer is unable to deliver these peak quantities then the contract demand is reduced to the quantity it is able to deliver. The PG&E rebuttal witness states the contractual provisions complained about predate the purchase of out-of-state gas and were not designed to make room for it. This witness further testifies it is the consistent policy of PG&E to make a market for California produced gas as it becomes available. The contracts contain take-or-pay provisions, therefore if California gas is available it will either be taken or paid for by PG&E. The witness stated there were but two problems in the utilization of California gas. First, the location or locations of the production, and second, the Btu content of the gas. The domestic gas purchased by PG&E from El Paso has a Btu content of 1090 and the Canadian gas has a Btu content of 1080 while, the witness states, the California gas varies greatly in heating value, the 1964 weighted average being 986 Btu.[illegible] The gas delivered by PG&E in the San Francisco-East Bay area is carefully controlled to approximate a 1075 Btu content. This necessitates a blending of the out-of-state gas with the California gas.

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[22] The Canadian companies charge a 7.5 percent rate of return on their individual investments. See Exhibit 7, p. 34, Alberta Gas Trunk Line Company, Ltd., transportation agreement; also Exhibit 7, p. 24, the Alberta Natural Gas Company, transportation agreement.

The PG&E requirements, and the source thereof, are reflected in the following compilation:

Daily average gas supply (Exhibit 17, p. 9 of 9)

[MMcf]

	1965	1968	1970
California produced	608. 2	453. 5	328. 2
El Paso	1, 020. 3	1, 028. 9	1, 035. 8
PGT	416. 8	614. 4	614. 4
Storage	58. 1	10. 9	4. 9
Total	2, 103. 4	2, 107. 7	1, 983. 3

PG &E's forecast of average daily requirements (Exhibit 18, p. 7)

[MMcf]

1965	*1968*	*1970*
2, 162	2, 467	2, 632

The foregoing tabulation of the PG&E daily average gas supply and its estimated requirements in 1970, assuming the certification of the volumes here requested, reflect a need for approximately 650,000 Mcf additional (2,632.0—1,983.3=648.7 MMcf).

It is also shown from the PG&E daily average gas supply estimate above that the supply of California produced gas will be reduced in 1970 by approximately fifty percent (608.2—328.2=280.0 MMcf).

The California Companies argue this estimated reduction is unwarranted because, in their opinion, considerably more gas could be produced from their

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[illegible] The three fields from which PG&E purchased the bulk of its California gas, and the Btu content, are the Rio Vista at 1045 Btu, the Grimes area at 1003 Btu and the Lathrop at 871 Btu (Tr. 1619).

fields for PG&E if the terms of the PG&E purchase contracts were modified. They allege that present production is governed by PG&E's takes under the minimum purchase provisions of their contracts whereas, it is alleged, prior to the certification of the original PGT import authorization PG&E purchased more than the minimum volumes provided by the contracts. They further allege that PG&E uses the California production for peaking, or swing, and if the sharp peaking provisions were removed from the contracts more gas would be available. PG&E's evidence shows the discoveries of dry gas in the California area, where it purchases gas, have been sporadic and that the discoveries have varied widely in Btu content. Therefore, PG&E, says it cannot safely rely upon estimated, but yet undiscovered, reserves in its planning for the acquisition of additional gas to supply prospective firm requirements. The PG&E witness said it would not be prudent to speculate on the possibility of future discoveries of California reserves from which to supply its customers, therefore it must make commitments to purchase known and available out-of-state reserves. The PG&E witness indicated the cost of the California produced gas, adjusted to 1,000 Btu dry basis and delivered by PG&E to its load centers would amount to approximately 11.0 cents per Mcf more than the Canadian gas similarly adjusted as to Btu, including the volumes here sought. Thus, if the importation of the first increment of 100,000 Mcf of Canadian gas were deferred for two years and California produced gas could be substituted, it was estimated the California customers of PG&E would be required to pay additional costs of some $8,030,000. The Commission made it abundantly clear, in its *Rock Springs* opinion, *El Paso Natural Gas Company, et al.*, 30 FPC 77 (1963), that in weighing the merits of a proposed project, the incremental cost of the proposed deliveries should be of primary importance.

To summarize, the PG&E witness says it is their policy to make a market for California produced gas and that over the years they have paid what they thought was an adequate price,[24] negotiated with the producers, that gave consideration to the load factor at which it acquires gas from out-of-state sources and other factors. The price paid California producers is comparable to the cost of gas to PG&E from underground storage. Therefore, PG&E says it will continue to make a market for the California produced gas, in lieu of underground storage, at comparable costs.

The following data, from the record, indicate that PG&E must curtail some of its industrial load in 1970 or before. This data reflects PG&E's dependence on California production.

PG &E peak day gas supply (Exhibit 17, p. 8 of 9)

[MMcf]

	1965-66	1968-69	1970-71
California production	1,321	1,047	765
El Paso	1,025	1,025	1,025
PGT	454	665	665
Storage	242	442	510
Total	3,042	3,106	[25] 2,899

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[24] Upwards from 30.0 cents per Mcf at the wellhead.

[25] The differences between these totals and the correct sum of the totals of the numbers in the column above them, represent the pipeline operating tolerances as shown on Exhibit 17, p. 8 of 9.

PG&E peak day requirements (Exhibit 18, p. 10)

[MMcf]

1965	*1968*	*1970*
2, 678	2, 932	3, 185

Approximately one-third of PG&E's interruptible industrial load is used in steam electric plants (Exhibit 18, p. 2). These would be the first to be curtailed. They are equipped to burn oil.

From all the testimony it is clear that PG&E will not only require all of the usable[26] California gas available but also the volumes here sought to be imported to meet its reasonably anticipated future supply requirements. The Staff of the Commission arrived at this same conclusion in its brief (p. 19).

ENGINEERING FEASIBILITY

There was no issue raised as to the adequacy of the proposed additional facilities to render the service proposed by PGT in its application.

DEPRECIATION ISSUE AND NET SALVAGE

Since the beginning of operations of its transmission line, PGT has been charging depreciation expense as part of its cost of service at the rate of 4 percent annually. The 4 percent rate, applied to plant on a straight line basis, reflects the 25-year life of the Canadian export permits, which were originally due to expire on October 31, 1986.

This Commission in its original authorization (24 FPC 134) approved PGT's Rate Schedule PL–1 including the above 4 percent depreciation rate. It also provided as follows:

> At such time as the aforesaid export permit, export license, or both, are renewed, extended or supplemented or modified so as to prolong or shorten the authorized export period, the unrecovered cost of the said depreciable gas plant shall be determined and the annual depreciation expense redetermined by the same method. (Original Sheet No. 12 to Pacific Gas Transmission Company's Rate Schedule PL–1, Ex. 5, *Pacific Gas Transmission Company, et al., supra,* 24 FPC 134, 150).

The Commission thereby furnished a formula for application in this present circumstance. The Canadian export permit is to be extended for three years to October 31, 1989 in conjunction with the additional 205,000 Mcf to be transported daily by PGT.

The California Public Utilities Commission strongly objects to the present depreciation practice of PGT now in force, even though the extended life of the project will cause a reduction in the depreciation rate from 4 percent to 3.7 percent (Tr. 1001).

The witness for the California Commission would revise the annual depreciation rate to 3.25 percent (Tr. 1003), after applying a 10 percent net salvage to PGT's line. In effect, this witness would reduce the rate, conforming it with the longer life of the physical plant, and also reduce the dollar amount of plant by 10 percent, to which the depreciation rate is applied. In his view, to the extent of these reductions, the California consumers would no longer be overcharged for the cost of depreciating PGT's line.

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[26] The Lathrop field has a maximum delivery in excess of the amount considered available, or usable, by PG&E. Because of its low—871—Btu content this gas must be blended with higher Btu gas to bring the weighted average Btu content up to delivery specifications of 1075 Btu for PG&E's market.

The Commission's Staff, in finding agreement with the position of PGT's witness, *i.e.*, a slight reduction in the rate of 4 percent to 3.7 percent, due to extending the life of the Canadian permits, believe the best forum for attacking the company's costs is one under proceedings of Sections 4 and 5 of the Act, namely, a rate proceeding.

The Examiner approves the Staff position. Opening the issue of depreciation, beyond what the company proposes, suggests that consideration might need to be given to other items in the cost of service. The Commission has clearly expressed its view in the original certificate case regarding any subsequent adjustment to the depreciation allowance.

The Examiner believes the depreciation expense issue is technical in nature and modification or adjustment requires the more appropriate forum the Staff recommends.

The Examiner, therefore, concurs with the company's proposal herein without a judgment as to its merits.

THE IPAA PROGRAM FOR A MORATORIUM ON THE IMPORTS OF NATURAL GAS

The Independent Petroleum Association of America (IPAA), an intervenor, is a well-known national trade association representing producers in every producing area in the United States. It opposes the issuance of an import certificate to PGT upon the theory that the importation of gas will decrease, or may even eliminate, the use of domestic gas, that the domestic supplies of gas in District V[27] have, and will continue to increase unless imported gas crowds it out of the market and, finally, to grant this import request would depress the search for and the use of domestic gas in District V and for these reasons would not be consistent with the public interest under Section 3 of the Natural Gas Act.

IPAA urges restrictions be placed on natural gas imports similar to those of the Mandatory Oil Import Program contending that imports, especially in California, are increasing at a faster rate than the increase in production. It is argued that restrictions on imports would increase the income of domestic producers which would create an additional incentive to explore for new reserves.

The question concerning California reserves and production, as well as the wellhead price being paid the California producer and the assurances of PG&E that it will make a market for California production of gas have been considered in some detail in other parts of this decision. No one here disputes the need of PG&E for additional gas to meet its market requirements. No one except PGT presented an application for authorization to supply the additional market requirements of PG&E. It is true that the State of Texas and TIPRO offered testimony, which was excluded from this record, indicating they had shut-in gas wells and uncommitted reserves from which the PG&E market requirements could be supplied, but they offered no program for transporting this shut-in gas or uncommitted reserves to the PG&E market. That California is an energy deficient state, and that the California markets must necessarily look more and more to out-of-state production for its future energy requirements, has been the consistent theme of California distributor and consumer witnesses before this Commission for years past. Such is the uncontroverted testimony of PG&E on this record.

Section 3 of the Natural Gas Act provides that the Commission, upon application, shall issue its order authorizing the importation of natural gas into the United States from a foreign country if, after a hearing, it finds the importation is in the public interest. Here PGT has shown by a preponderance of the evidence the need of PG&E for the gas, of the unreliability of California production for PG&E's expanding market, together with the feasibility of transporting the additional proposed volumes through its existing pipeline.

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[27] Includes the States of Alaska, Arizona, California, Nevada, Oregon, Washington and Hawaii.

The Mandatory Oil Import Program recognizes, as did this Commission in *PGT*, 24 FPC 134, the close and friendly relationship between Canada and the United States and therefore exempted imports of oil from Canada into District V. No reference was made to the importation of gas. The Commission's guidelines and standards for the importation of natural gas from Canada have been unmistakably stated in *Northwest Natural Gas Company, et al.*, 13 FPC 221, 235; *American Louisiana Pipe Line Company, et al.*, 20 FPC 575, 591; *Pacific Gas Transmission Company, et al.*, 24 FPC 134, 135 and reaffirmed in its Opinion No. 486 in *The Montana Power Company*, issued February 8, 1966, 35 FPC 191. Nothing is found in this record which would cause this Examiner to impose the conditions requested.

The Staff recommends, if this import application is approved, any future supplies of natural gas for the PG&E market should come from domestic sources so that there may be some balance between the sources of supply. The People of the State of California and the Public Utilities Commission of the State of California oppose this recommendation. They argue that a further increment of gas from PGT might be the most economical supply available to PG&E and, if the Staff recommendation were adopted, PG&E would be precluded from making the import purchase thus forcing PG&E to pay higher prices for domestic gas which would increase rates to consumers. The Examiner approves the California position against the imposition of the Staff recommendation.

The People of the State of California and the Public Utilities Commission of the State of California,[28] The Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, the Public Utility Commissioner of Oregon, the City and County of San Francisco,[29] the Southern California Gas Company, the Southern Counties Gas Company of California and the Pacific Lighting Gas Supply Company, each support the PGT application. The El Paso Natural Gas Company does not object to the granting of a certificate to PGT. The Staff "concludes that the public convenience and necessity requires the issuances of the certificate requested pursuant to the Natural Gas Act." (Staff Brief, p. 49, conclusion.)

PRESIDENTIAL PERMIT

PGT also applies for a Presidential Permit for the construction, operation, maintenance and connection, at the International Boundary between Canada and the United States of the facilities for the importation of the additional quantities of natural gas from Canada which are required, or may be necessary, for the importation here proposed. The requisite facilities for the initial project were authorized by the Presidential Permit issued August 5, 1960, in Docket No. G-17352, *PGT*, 24 FPC 134, 143 Ordering Paragraph (D). The facilities there authorized are presently in use. The proposed expansion to increase imports by 200,000 Mcf per day will be accomplished by adding compressor capacity to the existing system. No other change or alteration of the existing facilities at the International Boundary is required.

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[28] Except upon the issue of depreciation and net reserve.

[29] *Ibid.*

Since the existing Presidential Permit, *supra*, grants permission to construct, operate, maintain, and connect the facilities therein described for the purpose of transporting natural gas across the International Boundary in the amount, at the rate, and in the manner there authorized by the Commission and, since the application here is for permission to transport an additional 200,000 Mcf per day through the same facilities, no amendment or additional Presidential Permit is required. *Midwestern Gas Transmission Company, et al.*, Opinion No. 469, issued August 10, 1965, 34 FPC 457 at 460, 461; *The Montana Power Company*, Opinion No. 486, issued February 8, 1966, 35 FPC 191.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) The applicant, the Pacific Gas Transmission Company, is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore a "natural-gas company" within the meaning of the Natural Gas Act. See *Pacific Gas Transmission Company*, 24 FPC 134, Finding (5) p. 140.

(2) The additional facilities proposed by Pacific Gas Transmission Company hereinabove referred to and more fully described in the Pacific Gas Transmission Company applications and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Pacific Gas Transmission Company has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.

(4) The additional facilities proposed by Pacific Gas Transmission Company are adequate to render the supplemental service herein proposed.

(5) Pacific Gas Transmission Company is financially able to construct and operate the proposed additional facilities estimated to cost $13,857,000.

(6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company.

(7) The Pacific Gas Transmission Company plan for rendering the additional service to Pacific Gas and Electric Company is feasible.

(8) Pacific Gas Transmission Company is able and willing, subject to the terms of this order, properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission promulgated thereunder.

(9) The construction and operation of the facilities proposed by Pacific Gas Transmission Company and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, and a certificate of public convenience and necessity should be issued therefor.

(10) The proposed importation of the additional quantities of natural gas by Pacific Gas Transmission Company is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Natural Gas Act.

(11) The importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company in its application is appropriate and consistent with the public interest and should be authorized upon the terms and conditions of this order.

(12) The terms of the existing Presidential Permit issued to Pacific Gas Transmission Company on August 5, 1960, 24 FPC 134, sufficiently provide for the proposed additional imports and no amendment or additional Presidential Permit is required.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) An unconditioned certificate of public convenience and necessity is hereby issued to the Pacific Gas Transmission Company authorizing it to import from Canada an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1966, and an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1967 for transportation and sale to the Pacific Gas and Electric Company for resale, all as more fully described in the applications filed herein and the evidence received in these proceedings.

(B) The unconditioned certificate of public convenience and necessity hereby issued is subject to the applicable terms and conditions of the order of the Commission issued on August 5, 1960 to the *Pacific Gas Transmission Company, et al.*, 24 FPC 134.

HARRY W. FRAZEE,
Presiding Examiner.

OPINION NO. 490-A

ST. MICHAELS UTILITIES COMMISSION AND COMMISSIONERS OF ST. MICHAELS, MARYLAND, ET AL., DOCKET NO. E-7114, ET AL.*

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING

(Issued June 15, 1966)

Syllabus

1. Municipally-owned and investor-owned complainants (Tariff Customers) do not merit same rates charged Cooperatives. P. 1028.
2. It is service characteristics such as those here and not organizational nature of Delaware Power's wholesale customers which justify their classification—municipalities and other wholesale customers possessing essentially similar characteristics are entitled to same consideration given Cooperatives. P. 1028.
3. Complainants sustain no competitive detriment by fact that Power System charges lower rates to Cooperatives than Tariff Customers since record shows no competition between the two groups. Pp. 1028, 1029.
4. Commission *rejects* Complainants' current contention that they are handicapped in competing for business against Power System because latter,

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*For additional parties see Opinion No. 490 and order issued April 21, 1966, 35 FPC 591.

with Cooperatives, is engaged in program to stifle competition—complaints in proceeding contained no such allegations and no substantiating evidence was adduced at hearing. P. 1029.

5. Upon reconsideration, Commission *reaffirms* prior opinion and order and *denies* application for rehearing.

Chairman White *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

On April 21, 1966, the Commission issued Opinion No. 490 and accompanying order in the above-entitled proceeding, 35 FPC 591. Applications for rehearing of this Opinion and order have been filed under Section 313(a) of the Federal Power Act by the following: St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland (St. Michaels), the complainants in Docket No. E–7114; Stockton Light and Power Company (Stockton), the complainant in Docket No. E–7117; and City of Dover, Delaware (Dover), the complainant in Docket No. E–7175.

In general, the applications for rehearing advance arguments which are substantially similar to those relied upon previously in this case. These contentions were carefully considered by the Commission in its deliberations which culminated in Opinion No. 490 and order. Upon reconsideration, the Commission concludes that Opinion No. 490 and accompanying order are correct and should not be modified. The applications for rehearing afford no basis for disturbing the Commission's findings that the Delaware Power System's wholesale customers fall into two separate classifications, (1) Tariff Customers, including the complainants, and (2) Cooperatives, and that the rates charged by the Delaware Power System to these different classes of customers are just, reasonable and lawful.

Despite the contention of the municipally-owned and investor-owned complainants (Tariff Customers), that they merit the same rates charged the Cooperatives, the record in this proceeding plainly shows that the Cooperatives are distinguishable from the Tariff Customers particularly with respect to sparsity of service areas and service relationship with the Delaware Power System. It is significant that while the Delaware Power System makes delivery of electric service directly to the load centers of most of its Tariff Customers, the Cooperatives had to build their own transmission lines, at a cost of more than one-third of a million dollars, from their load centers to points on the Delaware Power System. In addition, the Cooperatives provide their own substations which take power at prescribed voltages, in contrast to the Tariff Customers, most of which have the substations provided by Delaware Power at voltages which are mutually agreeable. Also, the load characteristics of the Cooperatives as a group differ from those of most of the Tariff Customers in that the Cooperatives require less of their peak power demand coincident with the total system peak than do most of the Tariff Customers.

We emphasize that it is service characteristics such as those described above and not the organizational nature of Delaware Power's wholesale customers which justify their classification. Of course, municipalities, and other wholesale customers which possess essentially similar characteristics are entitled to the same consideration as that given the Cooperatives in this proceeding.

We note that the complainants sustain no competitive detriment by reason of the fact that the Delaware Power System charges lower rates to the Cooperatives than to the Tariff Customers since the record shows that there is no competition between these two wholesale groups. Further, the rate of return which the Delaware Power System receives on its sales to the Tariff Customers is no higher than that which it is entitled to collect. The Commission found on the record in this proceeding that a rate of return of 6 percent on Delaware Power System's wholesale business was fair and reasonable, and that the System was, in fact, receiving no more than 6 percent on its sales to its Tariff Customers.[1]

In their applications, the complainants have shifted the basis of their case to their current contention that they are handicapped in competing for retail, industrial business against the Delaware Power System because that System, in conjunction with the Cooperatives, is engaged in a program to stifle competition. These specifications of error must be rejected. This proceeding is on the complaints of the above-described parties whose pleadings contain no such allegations. No evidence was adduced at the hearings which substantiates them. To the contrary, despite the complainants' assertions that the Delaware Power System is engaging in a program to stifle competition, the record shows that the Delaware Power System affirmatively cooperated with Dover in making energy available to large industrial and military installations served by that city, and also accompanied rate reductions which it had negotiated with the Cooperatives with substantially similar rate reductions to the Tariff Customers.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the above-described applications for rehearing present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 490 and accompanying order on April 21, 1966, or which having now been reconsidered warrant any change or modification of said Opinion and order.

The Commission orders:

The applications for rehearing filed by the applicants, St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland, Stockton Light and Power Company, and City of Dover, Delaware, are denied.

Chairman White *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

YADKIN, INC., PROJECT NO. 2197

ORDER APPROVING REVISED PROJECT EXHIBIT M AND MODIFYING LICENSE

(Issued June 15, 1966)

On March 30, 1966, Yadkin, Inc., licensee for major Project No. 2197, filed application for Commission approval of a revised Exhibit M, sheet 6, dated

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[1] The Delaware Power System's rate of return on its service to the Tariff Customers amounts to 5.68 percent when computed on the basis of staff's cost of service data, adjusted by the examiner's cost of service and allocation findings. On the basis of a twelve-month average peak responsibility allocation, and using staff's cost of service data, the rate of return is 5.87 percent. On the basis of the average-and-excess demand allocation method, and using staff's cost of service data, the rate of return is 6.07 percent, but this last figure is subject to reduction when the examiner's cost of service adjustments are taken into consideration.

March 15, 1966, to reflect the change in the turbine rating of the Narrows Development of the project that will result from the proposed rehabilitation plan for Unit No. 3 to be completed in 1967. The project is located on the lower Yadkin stretch of the Yadkin-Peedee River in Stanley, Montgomery, Davidson, and Rowan Counties, North Carolina.

The licensee proposes to replace the turbine runner of Unit No. 3, thereby increasing the turbine rating from 27,000 horsepower at 165 net head to 36,000 horsepower at 175 design head, and thus eliminate a vibration problem attributed to the turbine, which was installed in 1917, and increase the efficiency of the turbine by about 4 percent. This change should be shown in subparagraph (b)(3) of *Paragraph I* of the amended license as hereinafter set forth.

The Commission finds:

Revised Exhibit M, sheet 6, dated March 15, 1966, and filed with the Commission on March 30, 1966, conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit M, page 6, which is superseded, should be eliminated from the license for the project.

The Commission orders:

(A) The revised Exhibit M, sheet 6 mentioned in the above finding is hereby approved as part of the license for Project No. 2197, and the license Exhibit M, page 6 mentioned in the same finding is hereby eliminated from the license for the project.

(B) Subparagraph (b)(3) of *Paragraph I* of the amended license is hereby further modified to read as follows, effective as of April 1, 1966:

(3) The constructed Narrows Development located about 2 miles from Badin, North Carolina. A concrete dam composed of a gated spillway section, a non-overflow section and an intake section; a concrete by-pass spillway section separate from the main dam composed of a gated section and a non-overflow section; a concrete by-pass spillway channel about 1,300 feet long on the left bank around the powerhouse; a reservoir, about 7½ miles long extending to the proposed Tuckertown dam, with normal pool elevation 541.1 feet, an area of 5,355 acres and a usable storage of 128,937 acre-feet at a drawdown of 31.1 feet; four steel penstocks about 340 feet long; a separate powerhouse containing one 27,000-horsepower turbine and three 36,000-horsepower turbines direct-connected to generators having a total capacity of 96,500 kilowatts (Units 1 and 2, 24,750 kw; Unit 3, 25,000 kw and Unit 4, 22,000 kw); four transmission circuits operating at generator voltage (13,200 volts) connecting with the Badin substation; and appurtenant electrical and mechanical equipment.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS, DOCKET NO. E-6384

ORDER APPROVING HEADWATER BENEFITS PAYMENTS

(Issued June 16, 1966)

This order approves proposed payments for headwater benefits provided by licensed hydroelectric projects in the Columbia River Basin to downstream non-Federal developments from January 1, 1949, through August 31, 1961. Section 13.1 of the Regulations under the Federal Power Act provides for such approval in lieu of a headwater benefits determination under Section 10(f) of the Act (16 U.S.C. 803(f)).

This is the last in a series of orders bringing headwater benefits payments in the Columbia River Basin up to date. We have found that no benefits accrued in the basin before January 1, 1949 (11 FPC 832). We have fixed payments to the United States for benefits provided by Federal headwater improvements from that date through August 31, 1964 (29 FPC 238, 31 FPC 1044, 33 FPC 300, 33 FPC 907, Order Terminating Proceeding on Rehearing issued February 11, 1966, 35 FPC 213). We have issued a bill, which has been paid, for payments to the United States for benefits accruing during the succeeding year, September 1, 1964, through August 31, 1965. We have approved payments to licensees for benefits provided by licensed projects to downstream non-Federal developments from September 1, 1961, through August 31, 1965 (29 FPC 238; 33 FPC 300, Order Approving Headwater Benefits Payments issued February 11, 1966, 35 FPC 212). After the present order, approving payments to licensees for 1949 through August 1961, headwater benefits determinations in the basin will be on a current basis.

By letter of August 20, 1964, the Commission stated that the non-Federal parties could await the determination of headwater benefits payments to the United States for 1949 through August 1961, before filing a settlement among themselves for the same period. The payments to the United States for this period were made final by the order of February 11, 1966, terminating the proceeding on rehearing of the order of April 30, 1965 (33 FPC 907). The settlement among the non-Federal parties designated below was filed by them jointly on March 16, 1966. The payments set forth in the settlement appear to be based on methods and practices generally similar to those used in the computation of payments to the United States for the same period. The payments are as follows:

Payers	Payees			
	The Montana Power Co.	The Washington Water Power Co.	PUD No. 1 of Pend Oreille Co.	PUD No. 1 of Chelan Co.
The Washington Water Power Co.	$125,900			
PUD No. 1 of Pend Oreille Co.	42,700	$7,200		
PUD No. 1 of Chelan Co. & Puget Sound P. & L. Co.	35,600	9,400	$1,123	
PUD No. 2 of Grant Co.	7,400	4,800	510	$5,100
Total	211,600	21,400	1,633	5,100

The payments shown above to The Montana Power Company and The Washington Water Power Company by PUD No. 1 of Chelan County and the Puget Sound Power and Light Company make allowance for interim payments in the amount of $8,800 to Montana Power and $11,400 to Washington Water Power. Chelan and Puget Sound were joint licensees of the Rock Island development, Project No. 943, during part of the period covered by the settlement. The payment to PUD No. 1 of Pend Oreille County includes payment for benefits provided by its Sullivan Lake development, Project No. 2225, for the period of September 1, 1961, through August 31, 1962, approval of which was not included in our order of February 6, 1963 (29 FPC 238).

The Commission finds:

The settlement agreement filed by the above-designated non-Federal parties on March 16, 1966, constitutes an effective and reasonable method of compensating licensees for headwater benefits provided in the Columbia River Basin to downstream non-Federal developments from January 1, 1949, through August 31, 1961.

The Commission orders:

The payments made pursuant to the settlement agreement filed by the above-designated non-Federal parties on March 16, 1966, are approved under Section 13.1 of the Regulations under the Federal Power Act with respect to headwater benefits provided in the Columbia River Basin by licensees to downstream non-Federal developments from January 1, 1949, through August 31, 1961.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, ET AL., DOCKET NO. CP64-211, ET AL.

ORDER WITH RESPECT TO QUALITY STATEMENTS

(Issued June 16, 1966)

The producers listed in the Appendix have submitted quality statements as required by Opinion No. 484 issued January 6, 1966, 35 FPC 40. The time period for consideration by the Commission of such quality statements was extended to June 6, 1966, by order issued April 11, 1966, 35 FPC 486, herein.[1] That order also advised the producers that no consideration would be given to the proposed upward adjustments for delivery of gas at a pressure above 500 psig contained in such quality statements.

The quality statements, which reflect full agreement between the respective sellers and El Paso Natural Gas Company (El Paso), are summarized in the Appendix. The treating costs and the methods used to determine such adjustments are the same as those used to determine adjustments in the quality statements submitted in compliance with Opinion No. 468.

For the reasons set forth in our order issued June 13, 1966, *supra*, p. 960, in Area Rate Proceeding, *et al.* (Permian Basin Area), Docket No. AR61-1, *et al.*, relating to quality statements submitted under Opinion No. 468, 34 FPC 159, we shall approve the adjustments set forth in the subject quality statements, except for the proposed upward adjustments for delivery pressure in excess of 500 psig. Accordingly, the applicable area rate under Opinion No. 484, effective as of the date of initial delivery, is 15.77¢ per Mcf at 14.65 psia for sales by Union and 15.91¢ per Mcf at 14.65 psia for sales by the other producers listed in the Appendix.

The Commission orders:

(A) The adjustments contained in the quality statements listed in the Appendix are accepted, except for the proposed upward adjustments for delivery pressure in excess of 500 psig.

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[1] The time period was further extended to June 30, 1966, by order issued June 6, 1966, *supra*, p. 892.

(B) The applicable area rate under Opinion No. 484 is 15.77¢ per Mcf at 14.65 psia for sales by Union and 15.91¢ per Mcf at 14.65 psia for sales by the other producers listed in the Appendix effective as of the date of initial delivery.

APPENDIX

Docket No.	Applicant	H_2S (Grs./Mcf)	Sulphur (Grs./Mcf)	CO_2 (%)	H_2O (#/Mcf)	Delivery pressure
CI64-1085	Union Oil Company of California	----------	[1, 4] 34	[4] 3.18	[2] +0.009	[3] 1200
CI64-1225	Skelly Oil Company	9.8	18.5	−3.00	[2] +.009	[3] 1200
CI64-1429	Midwest Oil Corporation	9.8	18.5	−3.00	[2] +.009	[3] 1200
CI64-719	Phillips Petroleum Company	9.8	18.5	−3.00	[2] +.009	[3] 1200
CI64-1153	Gulf Oil Corporation	9.8	18.5	−3.00	[2] +.009	[3] 1200

Btu content of all gas is 970 Btu/cf; a downward adjustment of 0.49¢/Mcf is listed.

[1] H_2S and Sulphur combined.

[2] Dehydration Charge: −0.10¢/Mcf.

[3] Pressure Credit: +0.98¢/Mcf.

[4] Cost of Removing Sulphur and CO_2: −0.14¢/Mcf.

* * *

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HUGOTON-ANADARKO AREA RATE PROCEEDING, DOCKET NO. AR64-1 AND PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66-24

ORDER DENYING APPLICATIONS

(Issued June 16, 1966)

On April 13, 1966 the Commission issued its order severing from the Hugoton-Anadarko Area Rate Proceeding, Docket No. AR64-1, *et al.*, 35 FPC 497, the issues with respect to the appropriate method of pricing natural gas produced by pipelines and their affiliates which is delivered into the pipelines' transmission systems, establishing a separate proceeding entitled "Pipeline Production Area Rate Proceeding, Docket No. RP66-24," ordering a prehearing conference limited to dealing with gas produced in the future by pipelines, joining parties, and prescribing procedure. On May 13, 1966, applications for rehearing and reconsideration of such severance and procedure were filed by Colorado Interstate Gas Company, Natural Gas Pipeline Company of America, Panhandle Eastern Pipe Line Company, and by thirteen pipelines filing jointly under the name of Pipeline Group.[1] In the alternative, these applicants ask that they be permitted to introduce evidence as to all phases of pipeline production, and that the initial proceedings in Docket No. RP66-24 not be limited to gas to be produced in the future.

The Commission's order of April 13, 1966 was purely interlocutory and procedural. It did not determine any substantive rights of any party. An application for rehearing of such an order will not lie. The applications will therefore be treated as applications for reconsideration. Rules of Practice and Procedure, Section 1.30(e).

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[1] By order issued May 25, 1966, 35 FPC 807, we have denied these pipelines' petitions to intervene as a group in the newly instituted pipeline production area rate proceeding, Docket No. RP66-24. The thirteen pipelines are, however, individual respondents in the proceeding.

We do not agree with the contention that the determination of the prices to be allowed pipeline producers will be delayed by the procedure adopted; on the contrary, we believe that a final determination will be reached expeditiously in the severed proceeding, and that the area rate proceeding will be resolved more quickly than would otherwise be the case. Applicants contend that they have expended time and money in presenting evidence before the severance, but little of the time and money will be wasted as a result of the severance. To the extent the evidence is relevant, it will be available in the severed proceeding.

Applicants aver that the Commission has committed itself to the view that the cost of service approach is inappropriate for pipeline producers as well as independent producers. This commitment is said to have been made by a unanimous Commission in Opinion No. 344, *Panhandle Eastern Pipe Line Co.*, 25 FPC 787, 794, and in the brief to the Supreme Court on that case, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, October Term, 1963, No. 614.[2]

That this contention is completely unfounded is italicized by the following statement in that brief:

> We wish to make clear that the policy determination that a new approach is necessary to fixing the rates for gas production business of pipelines, enunciated in this decision, represented the views of the members of the Commission at that time, and that the present Commission, while giving intensive consideration to the problem, has not yet determined the extent to which the emerging area price techniques, which it intends to apply to independent producers, should also be applied to the production activities of natural gas pipelines. * * * But regardless of how the policy determination is ultimately resolved, the present Commission adheres to the position stated in the opinion here that it is legally free to depart from cost-of-service concepts in pricing a pipeline's gas production *to the extent that a record presents an adequate basis for moving to a more appropriate pricing basis.*

Thus, contrary to Applicant's basic contention, the Commission in this severed proceeding (RP66–24) is seeking a full and complete record on the specific issues determined by the Examiner to be relevant and material to the first phase of this proceeding (as denominated in our order issued April 13, 1966), in order to determine whether there is an "adequate basis for moving to a more appropriate pricing basis" for pipeline produced gas.

The Commission finds:

The assignments of error and grounds for reconsideration, leave to adduce additional evidence or alternative relief set forth in the applications filed May 13, 1966 by Colorado Interstate Gas Company, Natural Gas Pipeline Company of America, Panhandle Eastern Pipe Line Company and the pipeline producers known as the Pipeline Production Group present no facts or legal principles which would warrant any change or modification in the Commission's order of April 13, 1966.

The Commission orders:

The applications for rehearing, reconsideration, leave to adduce additional evidence or for alternative relief filed May 13, 1966 by Colorado Interstate Gas Company, Natural Gas Pipeline Company of America, Panhandle Eastern Pipe Line Company and the pipeline producers known as the Pipeline Production Group are denied.

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[2] Panhandle's petition for a writ of certiorari was denied 372 U.S. 916.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64-17

ORDER DENYING APPLICATION FOR REHEARING

(Issued June 17, 1966)

On May 18, 1966, the Secretary of the Army filed an application for rehearing of our Opinion No. 489 and accompanying order issued in the above-captioned proceeding on April 20, 1966, 35 FPC 571. We have considered the said application for rehearing with care, and have concluded that the assignments of error and grounds for rehearing contained therein set forth no new facts or principles of law which were not fully considered when we issued the said opinion and order or which, having now been considered, warrant any change in or modification of the said opinion and order.

The Commission orders:

The application filed by the Secretary of the Army on May 18, 1966, for rehearing of the Commission's Opinion No. 489 and accompanying order issued in this case on April 20, 1966, is hereby denied.

Chairman White *not participating.*

Commissioner Ross *dissenting.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE CONNECTICUT LIGHT AND POWER COMPANY, THE HARTFORD ELECTRIC LIGHT COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 2485

ORDER GRANTING PETITION TO INTERVENE

(Issued June 17, 1966)

Petitions to intervene in the above-entitled proceeding on application for the proposed Northfield Mountain Hydroelectric project were filed on May 10, 1966, by the Holyoke Water Power Company and jointly by the Municipal Electric Association of Massachusetts, City of Chicopee, Town of Shrewsbury, and Town of Wakefield, Massachusetts.

On May 23, 1966, the applicants filed an opposition to the joint petition to intervene by the Municipal Association and the three individual Massachusetts municipalities, on grounds that their interest in the application is too remote and that the substantive questions in which the petitioners expressed an interest are not appropriate matters for the Commission's consideration of the application. Without at this time expressing any opinion on the merits of the matters in which the municipal petitioners have expressed an interest, we believe they may have substantive interests which could be affected by grant of the application and that their participation as interveners in the proceeding may be appropriate. See *Scenic Hudson Preservation Conference* v. *F.P.C.*, 354 F. 2d 608 (CA2-1965), certiorari denied, May 16, 1966; *Office of Communication of the United Church of Christ* v. *F.C.C.*, 19409 CADC, decided March 25, 1966.

The Commission finds:

The participation by the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

The petitioners are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That participation by petitioners shall be limited to matters affecting certain rights and interests specifically set forth in their petitions for leave to intervene; *And provided, further,* That the admission of the petitioners shall not be construed as recognition by the Commission that the interveners or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

TOWN OF MASON, TENNESSEE AND TRUNKLINE GAS COMPANY, DOCKET NO. CP66-209

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued June 17, 1966)*

Syllabus

Commission *directs* Trunkline Gas Company, under Section 7(a) of the Natural Gas Act, to establish physical connection of its facilities with those proposed to be constructed by applicant and sell natural gas to applicant.

Jerald H. Sklar for the Town of Mason, Tennessee.

William J. LeBuhn for the Trunkline Gas Company.

Agnes Mae Wilson for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

On May 9, 1966, the Presiding Examiner, Seymour Wenner, issued an initial decision in this proceeding under Section 7(a) of the Natural Gas Act ordering Trunkline Gas Company to establish physical connection of its transportation facilities with facilities which the Town of Mason, Tennessee, proposes to construct and to sell natural gas to Mason for resale and distribution. No exceptions have been filed to the examiner's decision within the period provided in our rules.

The Commission further finds:

Upon consideration of the entire record in these proceedings, including the evidence adduced, the briefs filed, and the presiding examiner's initial decision, said decision should be adopted as the decision of the Commission in this case.

The Commission orders:

The initial decision of the presiding examiner issued herein on May 9, 1966, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of this order.

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*Initial decision appears on p. 1037.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION UNDER SECTION 7(a) OF THE NATURAL GAS ACT

(Issued May 9, 1966)

WENNER, *Presiding Examiner:*

The Town of Mason, Tennessee, filed an application under Section 7(a) of the Natural Gas Act seeking an order directing Trunkline Gas Company (Trunkline) to establish physical connection of its transportation facilities with the facilities which Mason proposes to construct and to sell natural gas to Mason for resale and distribution therein.

Mason is a town of some 400 people, about 40 miles from Memphis. Trunkline's pipeline is a half mile away from Mason. The cost of constructing the connection and the distribution facilities is estimated at $70,000. The estimated daily requirement for the third year is 169 Mcf.

Trunkline does not oppose and Staff supports the application.

The parties have agreed to the following and it is so found:

1. Trunkline is a natural gas company;

2. Mason is legally authorized to engage in the local distribution of gas to the public;

3. The proposal will not place an undue burden on Trunkline;

4. The proposal will not compel Trunkline to enlarge its facilities;

5. The proposal will not impair Trunkline's ability to render adequate service to its customers. Trunkline's supply of gas is adequate for the purpose.

The real issue is whether the proposal is necessary or desirable in the public interest.

The benefits to consumers in Mason from introducing natural gas are convenience and cleanliness. While gas is more expensive than coal it is cheaper than electricity.

The engineering plans have been submitted by an experienced consulting firm that has successfully designed many similar systems. The hearing revealed no defects in the plans. The project is found to be feasible engineering-wise.

The estimates of customers, gas used, and cost are based on experience with similar systems and are reasonable.

The town has entered into a firm commitment with a well established financial house, M. A. Saunders and Company, Inc., to bid for revenue bonds in the required amount at an interest rate not exceeding 5 percent. The estimates show a ratio of net revenue to debt service based on 20 year totals of 2.27 to 1; and based on third year totals of 1.56 to 1. These estimates indicate a financially sound project.

It is concluded that the project is desirable in the public interest and that it is economically and financially sound.

In 1959 the Commission denied an application by Mason for gas service, 21 FPC 853. The prime objections were that Mason did not need the service and that the proposal was of doubtful financial soundness and could be a burden on the general taxpayers. The present project, unlike the former one, is to be financed solely out of revenue bonds which do not become a charge on the general revenues of the town. The area around Mason, though not Mason itself, has developed considerably since 1959. This is due in part to improved roads between Mason and Memphis and growing industrialization of the area. The benefits from having gas are considerable. The townspeople are familiar with the proposal and support it.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission, that the application of the Town of Mason be, and it hereby is granted, and that Trunkline Gas Company establish physical connection of its facilities with the facilities to be constructed by the Town of Mason, and it is further

Ordered, that Mason be prepared to receive natural gas service from Trunkline within one year from the date of this order, and it is further

Ordered, that Trunkline sell and deliver to Mason the volumes of natural gas required to meet the third year maximum daily requirement of 169 Mcf, and it is further

Ordered, that Trunkline shall report to the Commission in writing the date of commencement of service to Mason.

SEYMOUR WENNER,
Presiding Examiner.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HYDROELECTRIC LICENSE APPLICATIONS—EXHIBIT RELATING TO PROTECTION AND ENHANCEMENT OF FISH AND WILDLIFE RESOURCES, DOCKET NO. R-303

ORDER NO. 323

AMENDING SECTIONS 4.31, 4.41 AND 4.50 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued June 17, 1966)*

On April 19, 1966, the Commission issued a notice of proposed rule-making in this proceeding (31 F.R. 6379, April 27, 1966) wherein it proposed to amend Part 4 Regulations under the Federal Power Act (18 CFR 4.41) to provide that an exhibit setting forth matters related to the conservation and enhancement of fish and wildlife resources affected by the project be filed as part of license applications for proposed projects of more than 2,000 horsepower installed capacity, and constructed projects for which a new license is sought under Section 15 of the Federal Power Act.

The exhibit will help expedite the processing of applications by identifying potential problems with respect to fish and wildlife resources and suggesting possible solutions thereto upon the filing of an application. It will also facilitate the Commission's compliance with the requirements of the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661–666c) for consultation with the U.S. Fish and Wildlife Service, Department of the Interior and appropriate state fish and wildlife agencies on the conservation and enhancement of fish and wildlife resources affected by a project.

We received 32 responses to the notice: 23 of these[1] expressed unqualified approval of the proposed rule, and one opposed its adoption as unnecessarily duplicative of existing requirements.[2] The balance,[3] while generally supporting the rule, expressed certain reservations and suggested various modifications which we shall deal with below.

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*Published in the Federal Register on June 24, 1966 (31 F.R. 8779).

[1] (1) State of New Hampshire, Fish and Game Department; (2) State of Montana, Department of Fish and Game; (3) State of Minnesota, Department of Conservation; (4) State of Idaho, Fish and Game Department; (5) International Association of Game, Fish and Conservation Commissioners; (6) Wildlife Management Institute; (7) Medical

The Southern California Edison Company, as well as The Montana Power Company, point to the possible duplication in Exhibit S of materials already required in Exhibit R. Although the subject of recreational facilities may relate to fish and wildlife, the problems relating to fish and wildlife obviously go far beyond those involved in a recreational plan and should be dealt with separately. Moreover, the conservation and enhancement of fish and wildlife is considered separately in legislation on this subject (16 U.S.C. 661–666c). We shall, however, provide that matters covered in Exhibit R need only be included in Exhibit S by reference.

Colorado Wildlife Federation, Inc. indicated its support for the rule so long as it is supplemental to the Fish and Wildlife Coordination Act and not in lieu of it. In this regard, we wish to make clear that the requirement for Exhibit S is not intended to supersede the provisions of the Coordination Act. It will, however, facilitate the Commission's compliance with those provisions. The Colorado Federation also suggested the addition of language to include areas affected by the project as well as those within the project boundary, in the preparation of Exhibit S. It is not our intention to exclude from consideration in the preparation of Exhibit S, fish and wildlife resources affected by the project which are outside of the project boundary, *e.g.*, hatcheries and releases for downstream fish resources. We are modifying the language of the proposed amendment to clarify this point.

The Puget Sound Power & Light Company objects to the portion of the proposed rule which would require an applicant to consider the enhancement of fish and wildlife resources, in addition to conservation, in the preparation of Exhibit S, asserting that (1) it is contrary to the established policy of providing solely for the conservation of fish and wildlife resources; (2) it shifts the responsibility for enhancement from the public in general to ratepayers of the licensee thereby imposing on them a financial burden for a function not properly chargeable to them; and (3) it would be difficult for a licensee to determine in advance the extent to which it would have to pay for the improvement of fish and wildlife resources. We do not agree that an applicant should limit itself to the consideration of conservation of existing fish and wildlife resources in the preparation of Exhibit S. While our prime objective is, of course, the conservation of fish and wildlife resources which may be affected by a hydroelectric project, it would indeed be shortsighted to overlook

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College of South Carolina; (8) Federated Sportsmen's Clubs of N. H., Inc.; (9) City of Seattle, Department of Lighting; (10) Department of the Interior; (11) Arizona Game Protective Association; (12) Oklahoma Resorts, Inc.; (13) Pennsylvania Power & Light Company; (14) The High Rock Lake Association; (15) Sport Fishing Institute; (16) City of Tacoma, Washington, Department of Public Utilities; (17) Director, Marine Biological Laboratory, Woods Hole, Massachusetts; (18) State of Alabama, Department of Conservation; (19) Massachusetts Wildlife Federation; (20) Commonwealth of Pennsylvania, Department of Forests and Waters; (21) South Carolina Wildlife Federation; (22) State of North Carolina Wildlife Resources Commission; and (23) The Wilderness Society.

[2] The Montana Power Company.

[3] (1) The Izaak Walton League of America; (2) Colorado Wildlife Federation, Inc.; (3) Puget Sound Power & Light Company; (4) State of California Resources Agency, Department of Fish and Game; (5) Southern California Edison Company; (6) Pacific Power & Light Company; (7) Forest Service, United States Department of Agriculture; and (8) State of Colorado Department of Game, Fish and Parks.

opportunities which may present themselves for enhancing such resources or to fail to receive potential licensees to give consideration to these matters in the course of preparing their applications. In response to its second contention, where the enhancement of fish and wildlife resources is feasible in connection with the conservation of such resources, the licensee may be required to bear necessary costs therefor as it does all other reasonable costs associated with the project as licensed by the Commission under Section 10(a) of the Federal Power Act. As for determining in advance the cost for improving fish and wildlife resources, we are providing in the rule that Applicants furnish cost estimates, as part of the exhibit, with respect to all improvements proposed by the applicant. These estimates would not necessarily include those improvements which may be prescribed during the term of the license

The State of California-Resources Agency, Department of Fish and Game in its comment on the proposed rule has made several suggestions, one of which also raises the subject of enhancement of fish and wildlife resources. Contrary to the position of Puget Sound Power and Light Company, it urges that the matter of enhancement be emphasized. It cites as an example the Yuba River Project (FPC Project No. 2246) which incorporates features which will rehabilitate a significant salmon run. We believe that the language of the rule adopted will satisfactorily alert applicants to the importance of giving consideration to enhancement of fish and wildlife resources in developing the exhibit. California makes another suggestion similar to that made by the Colorado Wildlife Federation, with respect to the affect of a project upon fish and wildlife resources outside of the project area. As stated above, we have adopted this suggestion.

The California Department in its comments suggests that the potential applicants be required as part of the Exhibit S report to set forth detailed proposals considered necessary by the Department of the Interior or appropriate state fish and wildlife agencies as well as by the applicant itself. We do not believe it would be appropriate to thus convert the proposed Exhibit S to a joint proposal by the potential applicant and the appropriate Federal and State agencies or to require such applicant to include initially plans to which it does not subscribe. We have provided that the exhibit is to be prepared on the basis of studies made by the applicant after consultation and in cooperation with the appropriate Federal and State authorities and that the report contain a specific statement of the nature of this consultation and cooperation. In addition, the Exhibit S submitted by the applicant will be referred to the appropriate Federal and State agencies for their own comment pursuant to the provisions of the Fish and Wildlife Coordination Act and our rules and regulations (18 CFR 1.37, 4.31) thereby bringing the views of all concerned before the Commission for consideration. We believe that such a procedure rather than one requiring the applicants to speak for the agencies will provide the most appropriate way for achieving best results in this difficult area.

The California Department also contends that the rule as proposed leaves doubt as to whether the applicant is fully responsible for the necessary study costs and suggests a clarifying change of appropriate language to make clear that the applicant is responsible for conducting or having conducted the studies upon which the exhibit must be based. We do not believe that any hard and fast rule should be adopted on this subject. The rule places an obligation upon the applicant to insure that the exhibit is based on adequate studies and an applicant may make equitable arrangements with fish and wildlife agencies to prepare appropriate studies for it, if they are willing to make such studies. In other cases, however, the applicant may retain fish and wildlife staff or consultants to help it develop plans for this aspect of its potential project and the fish and wildlife agencies may see fit to make independent studies. We believe we would not encourage the most comprehensive planning if we attempted to prescribe a single mode of arrangement by rule.

In addition, the California Department urges that the requirement for Exhibit S be made applicable to minor projects. We believe that there may be merit to this suggestion, however, before making any determination thereon we shall solicit additional comments in a supplementary rule-making proceeding, while adopting the rule with respect to major license projects at this time.

The Forest Service, in addition to suggesting that the rule not be limited in applicability to the project area, a suggestion with which we have already indicated our concurrence, recommends that consultation with the Forest Service be required where National Forest land is involved and suggests additional language to effect this. We believe that such consultation would serve a useful purpose and we shall amend the proposed rule accordingly.

State of Colorado, Department of Game, Fish and Parks in its comments proposes that the rule be made applicable to projects of 1,000 horsepower or more. As indicated above, we shall consider this matter in a supplementary rule making proceeding. The Colorado Department further proposes that an applicant transmit a complete set of plans, included in the Exhibit S, to the State Fish and Wildlife agency one year prior to a hearing upon the application. Such a requirement, in our view, would not be feasible. The rule as proposed requires applicant to consult with state agencies in the preparation of the exhibit. Such consultation, presumably, would take place well in advance of the filing of an application and a considerable period of time before a hearing, if any, would be held upon the application. Moreover, it should be noted that this Commission, upon the filing of the application would submit the Exhibit S to the appropriate state agencies for recommendations pursuant to the Fish and Wildlife Coordination Act and our rules. We have already indicated our agreement with another suggestion by the Colorado Department with respect to the applicability of Exhibit S outside of project areas.

The Izaak Walton League of America suggests that the proposed Rule be broadened to include a requirement for detailed information about project effects on outdoor recreation resources in general. The impact of a project upon the general recreation resources of an area would more appropriately be considered by an applicant in the preparation of Exhibit R which deals with the development of recreational resources. Exhibit S is intended to apply solely to fish and wildlife resources.

In its comment the Pacific Power & Light Company recommends that it be made clear that Exhibit S contain the specific plan for conservation, including functional designs, if such plan and designs have been prepared. We believe this is made clear by the rule. However, Pacific's primary concern seems to be that a solution of all of the fish and wildlife problems may not be available prior to the filing of an application for license. The rule contemplates a reasonable attempt to solve such problems prior to the filing of the application. As for the company's suggestion that, where a preliminary permit has been issued, Exhibit S include the results of the work required to be done with regard to conservation issues by the preliminary permit, we do not believe that any distinction is required, with respect to Exhibit S, between those applicants holding preliminary permits and those who do not. In both instances the Commission would be equally concerned with the substance of the exhibit prepared in accordance with the rule.

The Commission finds:

The amendment of §§ 4.31, 4.41 and 4.50 is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act. *The Commission*, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 4(e), 9, 10(a), 10(i), and 309 thereof (41 Stat. 1065, 1068; 49 Stat. 858; 16 U.S.C. 797(e), 802, 803, 825h), *orders:*

(A) Part 4, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) Section 4.41 is amended by adding a new *Exhibit S* to read as follows:

§ 4.41 Required Exhibits:

* * * * * * *

Exhibit S. A report on the effect, if any, of the project upon the fish and wildlife resources in the project area or in other areas affected by the project and proposals for measures considered necessary to conserve and, if practicable, to enhance fish and wildlife resources affected by the project. The exhibit shall include functional design drawings of any fish ladders proposed to be constructed in compliance with section 18 of the Federal Power Act, such other facilities or developments as may be necessary for the protection, conservation, improvement and mitigation of losses of fish and wildlife resources in accordance with section 10(a) of the Act, and cost estimates for such facilities and developments. The Applicant shall prepare this exhibit on the basis of studies made after consultation and in cooperation with the United States Fish and Wildlife Service, Department of the Interior, and appropriate state fish and wildlife agencies and in the case of public lands, advise Federal Agencies having jurisdictional responsibilities therefor of its proposed plans. The exhibit shall include a statement on the nature and extent of applicant's consultation and cooperation with the above agencies. To the extent those aspects of fish and wildlife related to recreation are covered in Exhibit R, a specific reference to Exhibit R will suffice.

(2) In order to provide an exception to the requirement for an Exhibit S with respect to applications for certain constructed projects, § 4.50 is amended by adding the following new paragraph:

§ 4.50 Contents.

* * * * * * *

Exhibit S. This exhibit shall not be required for license applications on constructed projects, except with respect to applications for licenses under section 15 of the Federal Power Act.

(Secs. 4(e), 9, 10(a), 10(i); 41 Stat. 1065, 1068; sec. 309, 49 Stat. 858; 16 U.S.C. 797(e), 802, 803, 825h)

(3) In order to conform § 4.31, Acceptance for Filing or Rejection of Applications, to the amendment of § 4.41 prescribed in sub-paragraph (1), and Order 260-A, 28 F.R. 4092, as amended by Order 292, 30 F.R. 523, the third sentence of § 4.31 is amended deleting "and O," and inserting in lieu thereof "O, R, and S,".

(B) These amendments shall become effective August 1, 1966.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PIPELINE PRODUCTION AREA RATE PROCEEDING, DOCKET NO. RP66-24

ORDER GRANTING INTERVENTION

(Issued June 17, 1966)

The Public Utilities Commission of the State of Colorado on June 6, 1966, and the Georgia Public Service Commission on June 10, 1966, filed notices of intervention in the above-designated proceeding.

The Commission finds:

Although the above notices of intervention were not timely filed, participation by those Commissions may be in the public interest.

The Commission orders:

The Public Utilities Commission of the State of Colorado and the Georgia Public Service Commission are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of these interveners shall be limited to matters affecting asserted rights and interests specifically set forth in their respective notices of intervention; *And provided further,* That the admission of these interveners shall not be construed as recognition by the Commission that they, or either of them, might be aggrieved by any order or orders entered in this proceeding.

Before Commissioners: Lee C. White, Chairman, L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE POTOMAC EDISON COMPANY OF VIRGINIA, PROJECT NO. 2509

ORDER ISSUING LICENSE (MINOR)

(Issued June 17, 1966)

Application was filed on March 26, 1965 by Northern Virginia Power Company[1] (Applicant) of Winchester, Virginia for a minor license under the Federal Power Act (Act) for constructed minor Project No. 2509, known as Shenandoah Hydro Station, located on the South Fork of the Shenandoah River in Page County, Virginia. No lands of the United States are affected by the project.

According to the application, the project has been completed and in operation since 1929. It does not appear that any substantial alterations have been made to the project thereafter.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

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[1] Since the filing of the application for license, we have received documentary evidence that Northern Virginia Power Company has changed its name to The Potomac Edison Company of Virginia, whose address is 55 East Washington Street, Hagerstown, Maryland 21740. Hence, the word "Applicant" as used herein will refer to The Potomac Edison Company of Virginia.

The Department of the Interior, in reporting on the application, advised that the project, as currently operated, does not affect adversely fish and wildlife resources. However, the Department's Bureau of Outdoor Recreation recommended that any license for the project should contain a condition requiring Applicant to submit a recreational use plan, as provided in Article 13.

The Department of Health, Education, and Welfare has advised that since the project is a "run of the river" plant with power plant discharges approximating stream flow, the project will have no adverse effects on water quality which would be cause for denying a license for the project.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, (33 FPC 275) we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

In a proceeding on an application for license filed by Potomac Light and Power Company[2] for Project No. 2343 on the Shenandoah River at mile 5.6 just below Little's Falls, which is 6.5 miles above its mouth, the Commission on August 11, 1964, 32 FPC 584, found that the Shenandoah River from its confluence with the Potomac River up to at least Little's Falls is a navigable waterway of the United States. Additional research reveals that the South Fork of the Shenandoah River, from Port Republic, at river mile 156, downstream to Harper's Ferry on the Potomac, was used extensively for the transportation on flatboats of quantities of grain, flour, lumber and iron. From Harper's Ferry, the flatboats carried these products on the Chesapeake and Ohio Canal to markets in Georgetown, D.C. and Washington, D.C., The Shenandoah Hydro Station, Project No. 2509, is located on the South Fork of the Shenandoah River at river mile 127.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The South Fork of the Shenandoah River is a navigable waterway of the United States from a point at least as far upstream as Port Republic at river mile 156, downstream to its confluence with the Potomac River.

(2) Project No. 2509 is located on navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

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[2] Now known as The Potomac Edison Company of West Virginia.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,150 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to The Potomac Edison Company of Virginia (Licensee), of Hagerstown, Maryland, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2509, located on South Fork Shenandoah River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated by reference as part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Shenandoah Hydro Station Project No. 2509 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined;

(ii) a reinforced concrete gravity type dam, approximately 495 feet long and 15 feet high, which develops a 12 foot head; and a reinforced concrete and brick powerhouse (91 feet x 38 feet in plan) which contains three 250 kw vertically-driven generators direct-connected to three 434 hp turbines, and one 112 kw vertically-driven generator direct-connected to one 193 hp turbine (862 kw, total); and

(iii) all other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located in the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States," (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions whch are set forth as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $57.00 per annum.

Article 13. The Licensee shall, within one year from the date of issuance of this license, submit for Commission approval an Exhibit R for this project which conforms to § 4.41 of the Commission's Regulations under the Federal Power Act.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

[LETTER-ORDER AMENDING TEMPORARY CERTIFICATE]

June 17, 1966.*

Docket No. CI66-410, Sinclair Oil & Gas Company (Operator), *et al.*

SINCLAIR OIL & GAS COMPANY
Sinclair Oil Building
Tulsa, Oklahoma 74102

Attention: P. T. Davis, Manager, FPC Activity

GENTLEMEN: Based upon the information contained in the statement filed May 25, 1966, in Docket No. CI66-410 and the response thereto of Brooks Gas Corporation dated June 6, 1966, the temporary certificate issued May 19, 1966, 35 FPC 754, in Docket No. CI66-410 is hereby amended by deleting therefrom the second paragraph thereof and substituting therefor the following:

For the reasons set forth in the separate order issued this day, a hearing on the application is required to consider *inter alia* the contentions made by the intervener, Brooks Gas Corporation. In the meantime an emergency exists since gas taken in the Eldorado Field from lines through which Brooks performs a transportation service are draining gas from leases of the applicant as well as other producers who have contracted to sell to the Applicant. Accordingly, a temporary certificate is hereby issued to Sinclair Oil & Gas Company (Operator), *et al.*, to sell gas as proposed in the application for certificate, Docket No. CI66-410, subject to the following conditions:

(1) The initial rate shall be that provided in the rate schedule accompanying the certificate application or the applicable base area rate (16.5¢ per Mcf at 14.65 psia) as adjusted for quality pursuant to ordering paragraph (B) of the Commission's Opinion No. 468, 34 FPC 159, as modified, whichever is lower.

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*Rehearing denied August 17, 1966, 36 FPC 458.

(2) No increase in rate may be filed prior to January 1, 1968, except in compliance with a specific order of the Commission, for a rate in excess of the applicable area rate as determined pursuant to the Commission's Opinion No. 468, as modified, or pursuant to later order of the Commission.

(3) The filing, within 90 days from the date of initial delivery, of a Rate Schedule-Quality Statement as specified by ordering paragraph (F) of the Commission's Opinion No. 468, as modified, reflecting the rate determined in (1) above.

(4) If the quality of the gas delivered hereunder at any time deviates from the quality standards set forth in ordering paragraph (B) of Opinion No. 468–A, 34 FPC 1068, so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act: *Provided, however,* That adjustments reflecting changes in Btu content shall be computed by the applicable formula and charged without the filing of a notice of change in rate.

(5) In the event any amounts are collected in excess of the rate finally determined in (1) above, your company shall refund to Northern, from the date of initial delivery, with interest of 7 percent per annum, all amounts collected in excess of such finally determined rate.

(6) This temporary certificate shall not become effective until such time as Sinclair shall amend its application to request authorization for the construction and operation of any facilities necessary to transport gas produced and purchased from other producers in the Eldorado Field to the Eldorado Processing Plant, from which plant it appears that natural gas will be sold to Northern in interstate commerce.

(7) This temporary certificate, with conditions attached thereto, shall be accepted as issued within 30 days herefrom by written acceptance by a responsible official of the company (original and three copies). If reconsideration of the temporary certificate is sought, service hereunder shall not be started. If service is commenced under this temporary certificate, the conditions attached shall be effective and the service may not be discontinued without permission of the Commission issued pursuant to the provisions of the Natural Gas Act.

In all other respects, the temporary certificate issued May 19, 1966, shall remain unchanged.

By direction of the Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF TACOMA, WASHINGTON, PROJECT NO. 2016

ORDER APPROVING DRAWINGS OF FISH FACILITIES AND AMENDING LICENSE

(Issued June 17, 1966)

On May 31, 1966, the City of Tacoma, Washington, licensee for Project No. 2016, the Mayfield-Mossy Rock developments on the Cowlitz River filed for Commission approval a set of six functional drawings numbered MA–2351 through MA–2356 inclusive (FPC 2016–107 through 172) showing proposed fish facilities for construction at the project pursuant to Article 30 of the license.

In a supplementary letter to the Commission, dated June 2, 1966, the licensee described the proposed method of operation of the fish facilities which comprise a salmon hatchery, a game fish hatchery and rearing pond for game fish at Swofford Valley together with a fish barrier dam located adjacent to the salmon hatchery to replace the present upstream migrant facilities at Mayfield dam, pertinent transportation facilities, and upstream migrant facilities to be developed for operation in Mossy Rock reservoir. The proposed facilities were developed in cooperation with the State of Washington, Department of Fisheries and Department of Game as well as the United States Department of the Interior, Fish and Wildlife Service pursuant to Article 30 of the license.

While the drawings submitted generally describe the proposed facilities, continued cooperation with the fishery agencies would be desirable at the field level in developing details of design and operation of such facilities. We note further that although licensee makes reference in its letter to permanent downstream migrant traps and a fish barrier dam proposed for construction adjacent to the salmon hatchery, functional and design drawings, therefor have not been submitted.

We shall provide for continued cooperation with the fishery agencies as well as for the submission of appropriate drawings, for the permanent downstream migrant traps and the proposed fish barrier dam in a new article to be added to the license.

The Commission finds:

(1) The following described Exhibit L drawings conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

Licensee No.	FPC No.	Title
MA-2351	2016-107	Game Fish Hatchery—Vicinity Map and Site Plan.
MA-2352	2016-108	Game Fish Hatchery—Hatchery Plan.
MA-2353	2016-109	Salmon Hatchery—Site Plan.
MA-2354	2016-110	Salmon Hatchery—Plan.
MA-2355	2016-111	Salmon Hatchery—Sections.
MA-2356	2016-112	Swofford Valley Rearing Pond.

(2) It is appropriate and in the public interest to amend the license for Project No. 2016 as hereinafter provided.

The Commission orders:

(A) The exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2016.

(B) The license for Project No. 2016 is hereby amended by adding the following article:

Article 57. Licensee shall continue to cooperate with the fishery agencies in the development of details of design, operation, and maintenance of these and of other facilities needed to maintain the existing runs of anadromous fish at the project and in evaluating the degree of success of these facilities to maintain those runs. Licensee shall submit to the Commission for approval functional drawings of permanent downstream migrant fish traps and design drawings of the fish-barrier dam as proposed for construction on the Cowlitz river adjacent to the salmon hatchery, and construction thereof shall not commence prior to Commission approval.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNION ELECTRIC COMPANY, PROJECT NO. 459

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued June 17, 1966)

Application was filed on May 8, 1964 by Union Electric Company, licensee for Project No. 459, for amendment of license for the project to exclude therefrom the Osage—River mines (south) Lines, the Osage—Page Avenue (north) Lines, and the Osage Substation. The project is located on the Osage River in the vicinity of Bagnell, in the Counties of Miller, Morgan, Camden and Benton, Missouri.

According to the application, since 1940, certain project operational changes have caused changes in the character and operation of the two lines of such a nature that the lines and the Osage Substation now function as necessary component parts of the licensee's interconnected transmission system, and should be excluded from the license.

A Commission staff study of the function of the lines and the substation shows that while the subject transmission facilities transmit power from Project No. 459 when the Osage powerhouse is operating, they are also required, even at times of near peak load, to transmit power from other sources to Project No. 459 to the limit of their capacity to meet loads in the vicinity of and beyond the project. At all times when the project is not operating, which is most of the time since the project is a peaking plant, the subject transmission lines and substation are transmitting power to the project substation and thus serve a system rather than a project function.

No lands of the United States are affected by the subject transmission facilities.

The Commission finds:

(1) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received.

(2) The above-mentioned Osage-River mines (south) Lines, the Osage—Page Avenue (north) Lines and the Osage Substation, are not parts of a project within the meaning of Section 3(11) of the Federal Power Act.

(3) The following described exhibits filed as part of the application for amendment, showing the subject transmission facilities as excluded from the project works, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit K–1 (FPC No. 450–167), and

Revised Exhibit M: 6 typewritten pages, entitled "Description of Osage Project" dated April 30, 1964, filed in the Commission, May 8, 1964.

(4) The following described superseded license exhibits, showing the transmission facilities as parts of the project, should be eliminated from the license:

Exhibit K–1, sheet A (FPC No. 459–31),

Exhibit J–1, sheet No. 2 (FPC No. 459–71),

Exhibit F–K, (FPC Nos. 459–72 through –147),

Exhibit L–2, (FPC No. 459–166), and

Revised Exhibit "M," Manuscript, in seven sheets, entitled "Description Osage Project," signed on February 8, 1951, Union Electric Company of Missouri by John A. Woodridge, Vice President.

The Commission orders:

(A) The license for Project No. 459 is hereby further amended, effective as of May 1, 1966, to exclude from the license the Osage-River mines (south) Lines, the Osage-Page Avenue (north) Lines, and the Osage Substation.

(B) The exhibits described in finding (3) above are hereby approved as part of the license for Project No. 459, and the exhibits described in finding (4) above are hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 1889

ORDER GRANTING PETITIONS TO INTERVENE

(Issued June 17, 1966)

Petitions to intervene in the above-entitled proceeding on application for the Turner Falls hydroelectric development were filed on May 9, 1966, by Robert B. Shearer; on May 10, 1966, by Holyoke Water Power Company; and on May 10, 1966, jointly by the Municipal Electric Association of Massachusetts, City of Chicopee, Town of Shrewsbury, and Town of Wakefield, Massachusetts.

On May 23, 1966, the applicants filed an opposition to the joint petition to intervene by the Municipal Association and the three individual Massachusetts municipalities, on grounds that their interest in the application is too remote and that the substantive questions in which the petitioners expressed an interest are not appropriate matters for the Commission's consideration of the application. Without at this time expressing any opinion on the merits of the matters in which the municipal petitioners have expressed an interest, we believe they may have substantive interests which could be affected by grant of the application and that their participation as interveners in the proceeding may be appropriate. See *Scenic Hudson Preservation Conference* v. *F.P.C.*, 354 F. 2d 608 (CA2–1965), certiorari denied, May 16, 1966; *Office of Communication of the United Church of Christ* v. *F.P.C.*, 19409 CADC, decided March 25, 1966.

The Commission finds:

The participation by the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

The petitioners are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That participation by petitioners shall be limited to matters affecting certain rights and interests specifically set forth in their petitions for leave to intervene; *And provided further,* That the admission of the petitioners shall not be construed as recognition by the Commission that the interveners or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2537

ORDER DENYING APPLICATION FOR A PRELIMINARY PERMIT

(Issued June 20, 1966)

On August 13, 1965, the Alabama Power Company filed an application for a preliminary permit for thirty-six months to study the proposed Crooked Creek hydroelectric development, Project No. 2537, located in Clay and Randolph Counties, Alabama, on the Tallapoosa River, a tributary of the Alabama-Coosa River.

The Rivers and Harbors Act of 1945 (59 Stat. 10, 17) provides:

> Initial and ultimate development of the Alabama Coosa River and tributaries for navigation, flood control, power development, and other purposes, as outlined in House Document Numbered 414, Seventy-seventh Congress, is hereby authorized substantially in accordance with the plans being prepared by the Chief of Engineers with such modifications thereof from time to time as in the discretion of the Secretary of War and the Chief of Engineers may be advisable for the purpose of increasing the development of hydroelectric power * * *.

H.R. Doc. No. 414, submitted by the Corps of Engineers in 1941, consisted of transmitting letters recommending an appropriation for partial development of sites indicated on an attached map of the Alabama-Coosa and tributaries. Crooked Creek was one of the sites designated.

Congress in 1954 suspended the authorization insofar as it related to the Coosa River to permit non-Federal development (68 Stat. 302). The Commission thereafter issued a license to the *Alabama Power Company* for Project No. 2146, consisting of five developments on this river (18 FPC 257, 258). But the suspension, by its terms, did not affect the authorization as it related to tributaries of the Alabama-Coosa, including the Tallapoosa. We have held that if a hydroelectric site is authorized for Federal development, the Commission should not grant a preliminary permit for it. *Georgia Power Co.,* Project No. 2263, 22 FPC 827 (1959) and *Grand River Dam Authority,* 8 FPC 635 (1949). See also, *Savannah River Electric Co.* v. *F.P.C.,* 164 F. 2d 408 (1947).

The Commission finds:

The Crooked Creek hydroelectric site on the Tallapoosa River in Clay and Randolph Counties, Alabama, has been authorized for Federal development by the Rivers and Harbors Act of 1945.

The Commission orders:

The application for a preliminary permit filed by the Alabama Power Company on August 13, 1965, to study the proposed Crooked Creek hydroelectric development on the Tallapoosa River in Clay and Randolph Counties, Alabama, is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TOWN OF CHRISNEY, INDIANA AND MICHIGAN WISCONSIN PIPE LINE COMPANY,[1] DOCKET NO. CP66-182

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued June 20, 1966)

On December 3, 1965, as supplemented on February 10, 1966, the Town of Chrisney, Indiana (Applicant), filed in Docket No. CP66-182 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the Town of Chrisney, Indiana, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system, an odorizing and regulating station near the tap-point of Respondent's 30'' transmission line and approximately 0.7 mile of 4-inch lateral line extending from such point south to the city limits. Subsequent to the filing by Applicant Respondent indicated its willingness to construct a meter station and some 3600 feet of 4-inch lateral to connect its system with Applicant's proposed system.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	20,220	21.370	22,430
Peak day (Mcf)	282	297	313

On January 10, 1966, Respondent filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to provide the requested service and, would as noted construct a meter station and approximately 3600 feet of 4-inch lateral pipeline connecting its system to the proposed facilities of the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 28, 1965 (30 F.R. 16173). No protest, petition to intervene or request for hearing has been filed in this proceeding.

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[1] Respondent in the application was American Louisiana Gas Company, which company was merged into Michigan Wisconsin Pipe Line Company on January 2, 1966 (See order issued December 23, 1965 in Docket No. CP66-65, 34 FPC 1539).

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicant, Town of Chrisney, Indiana, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 313 Mcf of natural gas on a maximum day for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the Town of Chrisney and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Respondent, Michigan Wisconsin Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 313 Mcf of natural gas on a maximum day to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65–102; ATLANTIC SEABOARD CORPORATION, CP65–122; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP65–181; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY AND NORTH PENN GAS COMPANY, CP65–182; UNITED FUEL GAS COMPANY, CP65–198

ORDER DENYING REHEARING AND RECONSIDERATION

(Issued June 20, 1966)

On May 9, 1966, Atlantic Seaboard Corporation, United Fuel Gas Company and Columbia Gulf Transmission Company (Columbia Companies) filed a petition for rehearing and motion for reconsideration of our order of April 29, 1966, 35 FPC 642, permitting intervention, severing proceedings, and setting dates for filing of evidence and hearings.[1] That order severed from these proceedings a portion of Transcontinental Gas Pipe Line Corporation's (Transco) application in Docket No. CP65–181 for further hearing and permitted the intervention out of time of the United States Department of Health, Education, and Welfare provided that it file evidence to support contentions made in its tendered brief. The portion of Transco's application being severed (Docket No. CP65–181 (Phase II)) involves a proposal to sell and deliver to Consolidated Edison Company of New York, Inc. (Con Ed) 55,000 Mcf per day of gas under Transco's CD–3 Rate Schedule in substitution for 55,000 Mcf per day of storage service presently being rendered under Transco's GSS rate schedule. The matters remaining in these proceedings for early decision relate to systemwide expansions of the three Columbia Companies and Transco and the proposal in Docket No. CP65–182 to further develop the Wharton Storage Field. Involved in these proceedings are competing proposals by Atlantic Seaboard Corporation and Transco to serve certain of the requirements of Washington Gas Light Company (Washington) and Commonwealth Natural Gas Corporation.

The April 29, 1966, order directed the presiding examiner to issue his initial decision on those matters unrelated to the Con Ed service prior to an initial decision on the Con Ed matter. Because of this direction to the examiner Columbia Companies ask for rehearing and reconsideration of that order contending that "the Commission's decision in respect to the Consolidated Edison proposal *may* have a significant bearing upon Transco's ability to provide the competitive services proposed for Washington" and because severance "*may* thus render impossible a prompt disposition in the competitive questions * * * and result in protracted delay." (Emphasis supplied.) On May 20, 1966, Transco filed an answer to Columbia Companies' motion.

Columbia Companies agree that the service to Con Ed is a separate and distinct subject from the other matters but contend that the Commission's decision on that subject might have certain ramifications on other matters related to the contested comparative aspects of this proceeding. Columbia Companies have suggested a possibility, which apparently was not advanced by any party during the proceedings, concerning the availability of storage which could possibly, they contend connect the Con Ed service to the remaining issues in the proceedings.

The Columbia Companies' allegations depend upon the happening of an extremely unlikely result causing a situation where there might be an inadequate gas supply available to meet Transco's needs. Certainly, if either the Transco or Columbia Companies' position in this case were accepted, there would be no problem with regard to the availability of gas. It is only in the case, entirely speculative by nature, whereby some middle ground is reached, that there would be any danger whatsoever of Transco having an inadequate supply of gas to meet its anticipated market requirements. The presiding examiner's decision, issued June 13, 1966, found that Transco would have available all of the storage capacity which it needs, including either 99,515 Mcfd or 44,515 Mcfd of excess storage capacity depending upon whether or not there is a substitution for Con Ed service from the GSS storage service to year-round CD–3 service. Without at this time passing upon the validity of their contentions, there is no reason to conclude that a decision on the Transco proposal to substitute service to Con Ed would necessary have any effect on the competitive application which remains subject to decision by the presiding examiner. In any event if our subsequent consideration of any aspect of this case demonstrates that a determination of the competitive features thereof will depend upon resolution of the separated question of service to Con Ed, we can at that time take steps to defer action on the competitive features until the Con Ed service issues are also ready for resolution. To do so now would be clearly premature. Accordingly, we shall deny the petition for rehearing and motion for reconsideration.

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[1] Transcontinental Gas Pipe Line Corporation filed an answer.

The Commission orders:

The Petition for rehearing and Motion for Reconsideration of our April 29, 1966 order in the above-named proceeding filed by Atlantic Seaboard Corporation, United Fuel Gas Company and Columbia Gulf Transmission Company on May 9, 1966, is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

POWER AUTHORITY OF THE STATE OF NEW YORK, PROJECT NO. 2000

ORDER APPROVING AMENDED PROJECT EXHIBIT K

(Issued June 20, 1966)

On March 16, 1966, Power Authority of the State of New York, licensee for Project No. 2000, located on the St. Lawrence River, State of New York, filed for Commission approval an amended Exhibit K, Sheets 2 and 3 (FPC No. 2000–88, and –89), respectively, to show removal from the project area of a 48-acre parcel of land which had been acquired by the licensee for depositing spoil during the construction of the project.

The parcel, which is not contiguous to the remaining project boundary, has served its usefulness insofar as the project is concerned, and is not affected by fluctuations in the level of the project power pool. The parcel is not required for recreational development in connection with the project, and the Conservation Department, Thousand Islands State Park Commission has advised that it is not interested in developing the parcel for park purposes.

Our approval of amended Exhibit K, Sheet 2 (FPC No. 2000–88) is not necessary in that the elimination of the subject parcel leaves nothing remaining on Sheet 2 with respect to the project. The elimination from the license of Exhibit K, Sheet 2 (FPC No. 2000–54) is warranted for the same reason.

The Commission finds:

Amended Exhibit K, Sheet 3 (FPC No. 2000–89) conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit K, Sheet 2 (FPC No. 2000–54), and superseded license Exhibit K, Sheet 3 (FPC No. 2000–55) should be eliminated from the license.

The Commission orders:

The amended Exhibit K designated in the above finding is hereby approved as part of the license for Project No. 2000, and Exhibit K, Sheets 2 and 3 (FPC No. 2000–54, and –55) mentioned in the same finding, are hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UTAH POWER & LIGHT COMPANY, PROJECT NO. 1744

ORDER APPROVING AMENDED PROJECT EXHIBIT AND MODIFYING LICENSE

(Issued June 20, 1966)

On June 22, 1965, Utah Power & Light Company, licensee for major Project No. 1744, filed an application for Commission approval of an amended Exhibit K showing the relocation of a portion of the Farmington-Weber 44 kv steel tower transmission line, and the exclusion of the 2.3 kv plant service line and telephone line from Weber Plant to Weber Plant Dam. The project, known as the Weber Project, is located on Weber River in Weber, Davis and Morgan Counties, Utah, and affects lands of the United States within the Wasatch National Forest.

The changes were made necessary due to highway construction in Weber Canyon which required that the steel towers of the Weber Plant end of the 2.88 mile long Farmington-Weber transmission line be dismantled and its conductor cables rerouted and carried by the supporting structures of the Riverdale-Weber-Devil's Slide transmission line. Although that part of the latter line occupying lands of the United States is under a permit issued by the Department of the Interior following Commission letter, dated September 22, 1950, advising it had no objection to the issuance of such a permit, the entire Farmington-Weber line, including the rerouted conductor cables and insulators carried by the supporting structures of the Riverdale-Weber-Devil's Slide line, is part of the project and should be included in the license.

The above-mentioned plant service line from Weber Plant to Weber Plant Dam is to be replaced by a 7.2 kv line from Gateway, which serves as a source of power for operating the project dam, and should be included in the license. Since the new plant service line was not included in the application, we are by Article 29 herein requiring the licensee to submit for Commission approval a revised Exhibit M describing the 7.2 kv service line, as well as the rerouted portion of the Farmington-Weber transmission line to include the conductor cables and insulators rehung on the Riverdale-Weber-Devil's Slide transmission line, as parts of the project. The above-mentioned relocated telephone line from Weber Plant to Weber Plant Dam has been rehung on an existing transmission facility and is considered equipment "necessary and useful in connection with the project" within the purview of subparagraph C of Article 2 of the license.

The Chief, Forest Service, has reported favorably on the application, provided the license include the terms and conditions usually included in licenses for projects such as is herein involved. In addition to the terms and conditions already set forth in the license for this project, we are including additional Articles 30 and 31, presently included in licenses for such projects.

The Commission finds:

(1) Amended Exhibit K (FPC No. 1744–8) conforms to the Commission's rules and regulations and should be approved as part of the license for the project; license Exhibit K (FPC No. 1744–2) which has been superseded to the extent that it shows the 2.3 kv plant service line, the telephone line, and the unrelocated portion of the Farmington-Weber transmission line should be eliminated from the license; and license Exhibit K (FPC No. 1744–6) which

has been superseded to the extent that it shows the unrelocated portion of the Farmington-Weber transmission line should be eliminated from the license.

(2) The aforementioned new 7.2 kv service line from Gateway to the Weber Dam is a necessary part of the project and should be included in the license therefor.

The Commission orders:

(A) The amended Exhibit K designated in finding (1) above is hereby approved as part of the license for Project No. 1744, and the license exhibits described in the same finding as being superseded in part are hereby eliminated from the license for the project to the extent that they have been superseded.

(B) The aforementioned 2.3 kv plant service line and replaced telephone line from the Weber Plant to Weber Plant Dam are hereby eliminated from the license for the project.

(C) The license for Project No. 1744 is hereby modified to include therein the following additional articles:

Article 29. The Licensee shall submit within one year of the date of issuance of this order a revised Exhibit M describing the relocated portion of the Farmington-Weber transmission line and the 7.2 kv plant service line from Gateway.

Article 30. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse to neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 31. Upon abandonment of the project the Licensee shall remove all buildings, equipment, and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7292

ORDER DISMISSING APPLICATION

(Issued June 21, 1966)

Montana-Dakota Utilities Co. (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of Minnesota, Montana, North Dakota, South Dakota, and Wyoming, filed an application with the Federal Power Commission on May 12, 1966, seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue $10,000,000 of Promissory Notes due not more than one year after the dates of their respective issue.

In its application, the Applicant stated that it proposed to issue these Notes only if satisfactory bids were not received for the $10,000,000 of First Mortgage Sinking Fund Bonds, with respect to which an application was at that time pending in Docket No. E–7281. On June 2, 1966, the Applicant advised the Commission that it had received a satisfactory bid for the above-mentioned Bonds, and by an order issued on that same date the Commission approved the acceptance by the Applicant of the bid which it chose to accept for the sale of the $10,000,000 of First Mortgage Sinking Fund Bonds.

By a letter dated June 6, 1966, Applicant requested that its application for authority to issue the aforementioned Promissory Notes be withdrawn. Under these circumstances, it is appropriate and in the public interest that the application filed in Docket No. E–7292 be dismissed.

The Commission orders:

The application herein to issue short-term Promissory Notes is hereby dismissed.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65–49; UNITED FUEL GAS COMPANY, RP66–2; COLUMBIA GULF TRANSMISSION COMPANY, RP66–22

ORDER DENYING MOTION OF ELECTRIC COMPANIES TO REJECT WINTER SERVICE RATE SCHEDULES

(Issued June 22, 1966)*

The Electric Companies (Movants),[1] interveners herein, on May 6, 1966, filed a motion to "dismiss" the proposed Winter Service (WS) Rate Schedules of the Respondents, Seaboard and United Fuel[2] which were filed on March 31, 1965, and on July 20, 1965, respectively, as parts of Respondents' proposed restructured FPC Gas Tariffs. The proposed tariffs became effective, subject to hearing and refund on May 16, 1965, and November 1, 1965, respectively, in the above proceedings.[3]

In their motion, Movants assert United Fuel and Seaboard have filed under Section 4 of the Natural Gas Act, a comprehensive revision of their tariffs, a part of which is the institution of "a new class of service * * * identified as Winter Service (WS), to meet customers' peaking requirements"[4] from storage capacity. They also assert that whenever a company seeks to construct new facilities or "institute a new service," it must apply for a certificate of public convenience and necessity, pursuant to Section 7 of the Act authorizing the rendition of the "new service." They contend, therefore, that for the Commission to permit Respondents to institute the new Winter Service without first obtaining a certificate "contravenes" the law.

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*Reconsideration denied by order issued July 29, 1966, 36 FPC 322.

[1] Appalachian Power Company, Wheeling Electric Company, Ohio Power Company, and Kentucky Power Company (Movants).

[2] Atlantic Seaboard Corporation (Seaboard) and United Fuel Company (United Fuel).

[3] Columbia Gulf Transmission Company's FPC Gas Tariff was made subject to investigation and hearing as a cost-of-service form of rate, and its proceeding does not directly involve the WS rate issues.

[4] Movants' quote is from Commission suspension order issued May 13, 1965 in RP65–49.

In support of these contentions, Movants cite certificate orders issued to other pipeline companies in which new winter services have been proposed and authorized pursuant to Section 7 of the Act.[5] Movants contend that they are denied the opportunity to contest the adequacy and need for the facilities proposed to render the WS service as well as the opportunity to present evidence upon competition between electric and gas as energy sources. They claim that in being denied the opportunity to contest the "new service" on these grounds *before* the WS rates became effective, they have suffered competitive injury without due process of law.

The Respondents, Seaboard and United Fuel filed an answer to the motion to dismiss on May 23, 1966. Answers opposing the motion were also filed by Cincinnati Gas & Electric Company, Union Light, Heat and Power Company, jointly (Cincinnati), Dayton Power and Light Company (Dayton), Washington Gas Light Company (Washington), and the Commission Staff. On June 2, 1966, Movants filed a request for oral argument, or in the alternative, for permission to file an attached reply to all answers in opposition to their motion to dismiss. We have considered that reply in reaching our determination herein.

The Respondents deny that in the circumstances pertinent to their filing of the restructured tariffs, the Section 7 requirement that a certificate be obtained from the Commission before filing the new Winter Service Rate Schedules and commencing billing thereunder is applicable. They make several arguments but principally rely upon the contentions that "no new service is provided by the restructuring of the tariffs," and that the proposed tariffs, insofar as the Winter Service Rate Schedules are concerned, are "merely a new rate classification which enables * * * customers to purchase their *certificated* volumes at a substantially lower price under a combination of the applicable Contract Demand Rate Schedule and the Winter Service Rate Schedule."

In support of these contentions, Respondents assert that with respect to the service performed under the restructured tariffs, the deliveries are out of existing certificated transmission and storage facilities, and the volumes are no different from what they would be, had the proposed tariffs not been filed—thus, only the rates and charges are proposed to be altered.[6] Additionally, the Respondents assert that the only limitations contained in the certificates of public convenience and necessity issued to them relate to the firm maximum daily deliveries and such certificates do not prescribe service to customers under any specific rate schedules. The firm maximum daily deliveries, they state, are not proposed to be changed by the proposed tariff filings.

Respondents also contend that the Movants seek to fragmentize the proposed tariffs, each of which was offered as a "total package" in which the WS and

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[5] *Transcontinental Gas Pipe Line Corporation*, 13 FPC 992; 18 FPC 698, 710; 20 FPC 264; 27 FPC 859. *Texas Eastern Transmission Corporation*, 13 FPC 567, 992; 24 FPC 364. *Tennessee Gas Transmission Company*, 9 FPC 271; 15 FPC 414; 19 FPC 568; 32 FPC 1552. *New York State Natural Gas Corporation* (now *Consolidated Gas Supply Corporation*) 27 FPC 859. *Natural Gas Pipeline Company of America*, 28 FPC 542. See also *Colorado Interstate Gas Company*, proceedings in Docket No. CP66-299.

[6] In prehearing conference (Tr. 167-176), as well as in answers to the motion to dismiss, the customers stated that sales to them, both peak-day and annual, will not change as a consequence of the restructured tariffs.

CDS Rate Schedules are interdependent, and that the proposed tariffs constitute a rate reduction to *all* customers. The rejection of the WS Rate Schedules *only* would, they contend, create an "impossible" operating situation. In fact, it appears that the requested rejection would result in substantial *increases* in rates to the customers now taking both CDS and WS gas service and at the same time other customers taking CDS gas only receive lower rates.

Additionally, Respondents Cincinnati, Dayton and the staff object to the motion to dismiss on the ground that it is untimely in that it was filed one year after the Commission issued its suspension order in *Seaboard's* case, and over seven months after Appalachian Power Company was permitted to intervene in Docket No. RP65-49.

Cincinnati, Dayton, and the Commission Staff, each assert that the proposed filings subject to these consolidated proceedings involve no application for either new facilities, service to new customers, or new sales, or transportation of natural gas which would bring these filings within the purview of Section 7 of the Act. Cincinnati contends that in the circumstances pertinent herein, Section 7(c) is clearly not applicable since "the only thing under consideration * * * is a different method of billing * * *."

Upon full consideration of the motion to dismiss the WS Rate Schedules and all of the pleadings filed herein, including Movants' motion, filed June 2, 1966, for leave to file a reply to answers opposing their motion to dismiss, we are unable to find any adequate basis in either fact or law for either reversing or rescinding our suspension orders issued herein and for rejecting the WS Rate Schedules, as Movants request. Our action in providing for hearing and suspending the proposed tariffs, as we said in our order of May 13, 1965, affords all parties the opportunity to present evidence upon all contentions which they might raise to show that the tariffs should be rejected. This would include the contentions raised by Movants here as to whether the establishment of a separate rate for service from storage is in the public interest or is otherwise just and reasonable.

The cases cited by Movants, unlike these proceedings, involve proposed changes in underground storage and transmission facilities, increases in capacity and sales volumes, as well as intercorporate exchanges and mergers, all of which obviously require certificate authorizations, in addition to approval of proposed new winter service or peaking service rate schedules. *Supra*, f.n.[6] In contrast, the proposed WS Rate Schedules herein relate to storage facilities and storage operations which have been certificated. If in the future additional storage facilities or changes in demand are proposed, such proposals will be subject to Section 7 proceedings.

In our order issued May 13, 1965, suspending Seaboard's restructured tariff we noted that the filing raised a number of issues which could be resolved only on a record made during hearing. We there concluded that since a rate reduction was being made available to the customers it was in the public interest to enable the customers "desiring to take the new 'package' to have the benefit of such rate reduction as quickly as possible." We also stated:

> In taking this action we do not of course express any opinion that the proposed reduction is sufficient to render Seaboard's rates just and reasonable *or that the manner of such reduction is a reasonable one.*

The dismissal of the WS Rate Schedule as requested in the Electric Companies' motion would deprive the consumers of these benefits,[7] or delay them for a considerable period. We are of the view that the narrow technical question raised by that motion does not warrant reversal of the procedures we have prescribed in these dockets for determining the justness and reasonableness of the rates proposed and whether the manner of the reduction is a reasonable one.[8]

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[7] Cincinnati's answer indicates that its retail rate *decreases* have already been implemented to reflect the restructured tariff rates.

Furthermore, we are of the view that the motion is untimely in that it was not filed until more than seven months after Movants were permitted to intervene herein and it is outside the scope of the allegations contained in Movants' petitions for leave to intervene and of our orders permitting such intervention.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the Electric Companies' motion to dismiss the WS Rate Schedules present no new facts or principles, or law, which were not considered by the Commission when it issued its hearing and suspension orders on May 13, 1965 and September 14, 1965, respectively, in Docket Nos. RP65-49 and RP66-2, or which having now been considered, warrant any change or modification of said orders.

(2) The Electric Companies' motion to dismiss the WS Rate Schedules should be denied.

The Commission orders:

The Electric Companies' motion filed May 6, 1966, to dismiss the Winter Service (WS) Rate Schedules proposed by Respondents Seaboard and United Fuel, is hereby denied.

Commissioner Ross *dissenting.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-334

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 22, 1966)

On April 25, 1966, Central Illinois Public Service Company (Applicant) filed in Docket No. CP66-334 an application, as supplemented on May 2, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its transportation facilities with the facilities to be constructed by Applicant and to sell and deliver to Applicant up to 538 Mcf of natural gas per day for resale and distribution in the Village of Edgewood and the Town of Mason, Effingham County, Illinois, and their environs, all as more fully set forth in the application.

The Village of Edgewood and the Town of Mason are located in the southern part of Effingham County, approximately 8 and 9½ miles, respectively, east of the gas transmission pipeline of Respondent. The physical connection proposed will require Respondent to construct, own and operate a pipeline tap and a metering and regulating station on its transmission pipeline at a point approximately eight miles west of the Village of Edgewood.

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[8] See *F.P.C.* v. *Tennessee Gas Transmission Company*, 371 U.S. 145, 155, wherein the Supreme Court citing *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 147 (1960) states: "It is, therefore, the duty of the Commission to look at 'the backdrop of the practical consequences [resulting] * * * and the purposes of the Act' * * *."

Applicant will construct, operate and maintain the following facilities:

(a) Approximately 8 miles of 2-inch natural gas transmission pipeline extending from the proposed metering and regulating station of Respondent to a point near the west corporate limits of the Village of Edgewood,

(b) approximately 2½ miles of 2-inch pipeline extending from a point near the west corporate limits of the Village of Edgewood along Illinois Route 37 to a point near the west corporate limits of the Town of Mason, and

(c) natural gas distribution systems in the Village of Edgewood and the Town of Mason and their environs.

The total estimated natural gas requirements of Applicant during the initial three years of proposed operations are as follows:

Mcf (at 14.65 psia and 1,000 Btu per cubic foot)

	First year	Second year	Third year
Peak day:			
Mason	129	190	226
Edgewood	199	281	312
Total	328	471	538
Annual:			
Mason	13,387	19,626	23,233
Edgewood	22,688	31,296	34,377
Total	36,075	50,922	57,610

These volumes will be sold to Applicant pursuant to Respondent's G–1 Rate Schedule.

The estimated total cost of the facilities to be constructed by Applicant is $200,212, which will be financed from internal funds.

On June 7, 1965, Applicant was granted franchises by both Edgewood and Mason. Applicant accepted the franchises on June 15, 1965.

On March 8, 1966, the Illinois Commerce Commission issued to Applicant a certificate of public convenience and necessity authorizing the proposed service.

Respondent filed an answer to the application on May 5, 1966, and supplemented the answer by a filing on May 16, 1966. Respondent has no objection to the proposal.

Due notice of the filing of the application was published in the Federal Register on May 7, 1966 (31 F.R. 6843). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation with its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) Applicant is a public utility company in the State of Illinois and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 538 Mcf of natural gas per day to Applicant, under Respondent's G–1 Rate Schedule, for resale and distribution in the Village of Edgewood and the Town of Mason, Illinois, and environs, as hereinbefore described and as more fully described in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 538 Mcf of natural gas per day to Applicant, under Respondent's G–1 Rate Schedule, for resale and distribution in the Village of Edgewood and the Town of Mason, Illinois, and environs, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

A. J. INDUSTRIES, INC., PROJECT NO. 2307

ORDER ADJUSTING PORTION OF PROJECT MAINTENANCE SCHEDULE REQUIRED BY LICENSE

(Issued June 23, 1966)

On May 9, 1966, A. J. Industries, Inc., licensee for Project No. 2307, requested further modification of Article 35 of its license (30 FPC 1064) for the project insofar as it requires the repair during the *Third Year* (1966) of the saddle dams at the Upper Annex Creek Lake development of the project. The project is located on Salmon and Annex Creeks, First Judicial Division, Alaska, and affects lands of the United States within the Tongass National Forest and other lands of the United States.

The licensee proposes to repair or replace the timber dam at the Annex Creek development and that such repair or replacement, in addition to such repair of the saddle dams as may be necessary as now scheduled for 1966, would require more than one construction season, including the time required to prepare designs and obtain construction bids for the timber dam. The licensee points out that work on either the saddle dams or the timber dam would require lowering the water level of the reservoir if such work were done separately, with a resultant substantial increase in the cost of same. In the circumstances, the licensee requests that Item 1 for the *Third Year* (1966) of Article 35 of the license be deleted and Item 1 be added to the maintenance schedule for the *Fourth Year* (1967) along with the requirement for repair or replacement of the timber dam. The licensee advises that pending recommendation by its consulting engineers concerning the saddle and timber dams, the licensee will make necessary immediate repairs to such structures.

Commission staff has made a field investigation of the project and has recommended approval of the licensee's request.

Inasmuch as the maintenance work required by Article 35 of the license to be performed during the first (1964) and second (1965) years have been completed, we are by this order deleting such requirements from the article.

The Commission finds:

It is appropriate and consistent with the public interest that Article 35 of the license be further modified as hereinafter ordered.

The Commission orders:

(A) Article 35 of the license for Project No. 2307, as modified by our orders of December 23, 1963, 30 FPC 1570, and August 26, 1965, 34 FPC 588, respectively, is hereby further modified to read as follows:

Article 35. The Licensee shall continue to repair and modify the Salmon Creek and Annex Creek developments to make the structures safe and restore the project to a satisfactory operating condition in accordance with the following schedule:

1966

1. Replacement of supports for Salmon Creek penstock No. 1.
2. Continuation of the rehabilitation of the Salmon Creek flume.
3. Clean and paint valves of outlets of Salmon Creek and Annex Creek dams.
4. Continuation of the repair and modification of generating equipment.

1967

1. Repair or replace saddle dams and timber dams at Upper Annex Creek Lake.
2. Drill and grout Salmon Creek dam.
3. Gunite and waterproof upstream face of Salmon Creek dam.
4. Continuation of the rehabilitation of the Salmon Creek flume.
5. Check the plate thickness of all penstocks.
6. Continuation of the program for the repair and modification of generating equipment.

1968

1. Repair tailrace concrete at Annex Creek power plant.
2. Completion of the rehabilitation of the Salmon Creek flume.
3. Completion of the repairs and modifications to the generating equipment and appurtenant facilities of the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

INTERSTATE POWER COMPANY, PROJECT NO. 2340

ORDER ISSUING LICENSE (MINOR)

(Issued June 23, 1966)

Application was filed on February 11, 1963 by Interstate Power Company (Applicant) of Dubuque, Iowa, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2340, known as the Delhi Hydroelectric Generating Station, located on the Maquoketa River, a tributary of the Mississippi River, in Delaware County, Iowa, near the town of Delhi.

The project has two generators with total nameplate rating of 1,500 kilowatts. The project was constructed and has been in operation since 1928 with no substantial changes since that time.

The Delhi plant is operated to supply power to Applicant's interconnected transmission system. The transmission lines comprising the interconnected system cross the state lines of Iowa and Minnesota and Illinois.

The Department of the Interior, in reporting on the application, advised that any license for the project should contain the terms and conditions usually included in licenses for the type of project herein under consideration in the interests of fish and wildlife and recreation, all as set forth in attached Form L-12, and special Article 13.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of Health, Education, and Welfare has advised that it does not foresee any adverse effects from the project on matters within the Department's responsibilities.

The license herein granted shall have an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting licensing authority over Taum Sauk Project No. 2277 by virtue of the effect of the project on the interests of interstate commerce by its utilization of headwaters of a navigable stream to generate electric energy for an interstate power system (381 U.S. 90), and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.* (33 FPC 275), we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of these sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) The project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of Delaware, and has submitted satisfactory evidence of compliance with the

requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public use, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Federal Power Act:

> Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Interstate Power Company (Licensee) of Dubuque, Iowa, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of May 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of Delhi Hydroelectric Generating Station, Project No. 2340, located on the Maquoketa River, in Delaware County, Iowa, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act insofar as not expressly waived herein, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Delhi Hydroelectric Generating Station Project No. 2340 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits of which are otherwise defined.

(ii) a dam consisting of: a 45.2-foot concrete intake section, an 83-foot concrete spillway section, and a 425-foot earth fill section; a fishway; a 538 acre reservoir; a two story brick powerhouse housing two generators with nameplate of 1500 kw; a substation; and other necessary appurtenances.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–12 (May 1, 1966) entitled "Terms and Conditions of License for Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (*supra*, p. 875), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles.

Article 12. The Licensee shall pay to the United States the following annual charge effective May 1, 1965:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, $100.00 per annum.

Article 13. The Licensee shall, for the conservation and development of fish, wildlife and recreation resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be prescribed by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Iowa State Conservation Commission, after notice and opportunity for hearing and upon a finding based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SUN OIL COMPANY, DOCKET NO. G–8288, ET AL; SUNRAY DX OIL COMPANY, G–6822, ET AL.; MARATHON OIL COMPANY, RI64–549; TRIBUNE OIL CORPORATION, G–4335, ET AL.; J. R. FRANKEL, ET AL., G–17671, ET AL.; GAS GATHERING CORPORATION, RP65–11; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65–31

ORDER RELEASING REFUNDS

(Issued June 23, 1966)

Pursuant to the provisions of the Commission's orders approving the settlements in the producer proceedings listed above, the producers are presently retaining refunds pending further order of the Commission. In each of those proceedings, substantial amounts are refundable to Transcontinental Gas Pipe Line Corporation (Transco).[1] With the exception of amounts being held by The Atlantic Refining Company, which are being released by separate order, the proceedings listed above include all cases in which amounts refundable to Transco are being retained pending further Commission order.

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[1] The refunds being retained by J. R. Frankel, *et al.* are actually refundable to Gas Gathering Corporation. By letter dated February 16, 1966, however, Gas Gathering stated its intention to flow through to Transco all amounts received from Frankel.

By letter filed May 11, 1966, Transco presented a summary of its disposition of supplier refunds received in the past, and requested the release of refunds being held in certain of the proceedings listed above. Transco's letter shows that of $18,335,000 in supplier refunds received, it has refunded or will refund $18,053,000 to its customers. Transco indicates further that of the $1,535,000 being held in four proceedings referred to in that letter,[2] it proposes to flow-through $1,505,000. In summary Transco sets forth that out of a total amount of $19,870,000 comprising amounts heretofore released to it, and those involved in this order, it is obligated to flow-through $19,558,000 and would retain $312,000 or less than 2 percent of the aggregate amount.

Because of Transco's broad flow-through obligations, the minor percentage it claims a right to retain, and the number of suppliers to which a portion of such percentage would be applicable, we think in these circumstances it is appropriate to release to Transco all the amounts presently being retained by its suppliers. We recognize that Transco claims that it is not obligated to flow-through certain amounts received out of the proceedings covered by its letters, and that it may take a similar position with respect to amounts received out of the other two proceedings listed above.[3] We are, therefore, directing Transco to retain subject to further Commission order all amounts attributable to jurisdictional sales which it claims it is not obligated to flow through.

We are also directing Transco to retain pending further Commission order amounts which would be flowed through to those customers of Transco which are natural gas companies subject to the Commission's jurisdiction.

The Commission orders:

(A) Sun Oil Company, Sunray DX Oil Company, Tribune Oil Corporation (and the Escrow Agents listed in the attached appendix) and Marathon Oil Company are directed to release and pay over to Transcontinental Gas Pipe Line Corporation (Transco) within 45 days after the date of this order the amounts shown to be refundable to Transco in the reports filed by such companies pursuant to the provisions of the respective orders listed in the appendix attached hereto, together with the net escrow earnings or interest applicable to such amounts.

(B) J. R. Frankel, *et al.* and the First City National Bank of Houston are directed to release and pay over to Gas Gathering Corporation within 45 days after the date of this order, the amount shown in the report filed October 7, 1965 in Docket No. G–17671, *et al.*, together with the net escrow earnings of such amount.

(C) Gas Gathering Corporation is directed to refund to Transco the amounts received pursuant to paragraph (B) above, within 15 days after such amounts are received, in accordance with Gas Gathering's letter dated February 16, 1966.

(D) Each company making refunds in accordance with paragraphs (A), (B) and (C) above shall submit a report to the Commission showing the details of the refund within 15 days after the refund is made. The principal sums (principal and interest accrued prior to settlement) and the net escrow earnings or interest accrued since the settlement shall be shown separately.

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[2] Sun Oil Company, Docket No. G–8288, *et al.;* The Atlantic Refining Company, Docket No. G–9283, *et al.;* Sunray DX Oil Company, Docket No. G–6822, *et al.;* and Marathon Oil Company, Docket No. RI64–549.

[3] Tribune Oil Corporation, Docket No. G–4335, *et al.;* J. R. Frankel, *et al.*, Docket No. G–17671, *et al.*

(E) Within 30 days after receipt of the refunds to be made pursuant to paragraphs (A) and (C) above, Transco shall file a report of its intended disposition of the amounts received. The report shall describe in detail the amount payable to each jurisdictional customer, the bases used in computing the amounts payable, the periods involved, and the relevant docket numbers. The report shall also show clearly the amounts attributable to jurisdictional sales which Transco claims it is not obligated to flow-through to its jurisdictional customers. The report shall be accompanied by a brief statement of the reasons for Transco's claim, if any, that it is not obligated to flow-through such jurisdictional amounts to its customers. Copies of the report shall be served by Transco on its customers and interested state commissions. Except as provided hereinafter, and unless notified to the contrary by the Secretary within 30 days after the report is filed, Transco may distribute the amounts shown in its report in the manner provided in relevant settlement agreements and orders after the time for such notice from the Secretary has expired.

(F) Transco shall retain subject to further order of the Commission, in accordance with the provisions of paragraph (H) below, those portions of the refunds received pursuant to paragraphs (A) and (C) above which are attributable to purchases from Transco by:

1. Atlantic Seaboard Corporation.
2. Eastern Shore Natural Gas Company.
3. Manufacturers Light and Heat Company, The.
4. New York State Natural Gas Corporation (now Consolidated Gas Supply Corporation).
5. North Penn Gas Company.
6. United Natural Gas Company.

(G) Transco shall also retain subject to further order of the Commission, in accordance with the provisions of paragraph (H) below, any and all portions of the refunds received pursuant to paragraphs (A) and (C) above which are attributable to jurisdictional sales by Transco which Transco claims it is not obligated to flow-through to its jurisdictional customers.

(H) The amounts ordered to be retained in paragraphs (F) and (G) above shall be retained by Transco in accordance with the provisions of paragraph (H) of the order issued April 6, 1966 in *Placid Oil Company, et al.*, Docket No. G-13183, *et al.*, 35 FPC 477.

APPENDIX

Docket No. G-8288, *et al.*

Company	Docket Nos.	Order issued	Report filed	Escrow agent	Refund due Transco [1]
J. R. Frankel, *et al*	G-17671, *et al*	9/ 1/65 (34 FPC 712)	10/ 7/65	First City National Bank of Houston.	[2] $119,381
Marathon Oil Company.	RI64-549	3/25/65 (33 FPC 637)	5/ 5/65	First City National Bank of Houston.	25,641
Tribune Oil Corp	G-4335, *et al*	4/20/65 (33 FPC 827)	5/14/65 6/23/65	Chemical Bank New York Trust Company.	182,809
Sun Oil Company	G-8288, *et al*	10/1 /64 (32 FPC 894)	11/17/65	The Philadelphia National Bank.	885,408
Sunray DX Oil Co	G-6822, *et al*	1/29/65 (33 FPC 128)	3/15/65	National Bank of Tulsa.	513,944

[1] Excluding escrow earnings and additional interest.
[2] Refundable to Transco through Gas Gathering Corporation.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. CP64-5 AND CP65-85

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 23, 1966)

On April 6, 1966, Texas Eastern Transmission Corporation (Petitioner), filed in Docket Nos. CP64-5 and CP65-85 a petition to amend the order of the Commission issued in Docket No. CP65-85 on January 19, 1965, 33 FPC 92, and the order of the Commission issued in Docket No. CP64-5 on December 19, 1963, 30 FPC 1559, as amended, issuing certificates of public convenience and necessity to Petitioner. Petitioner proposes to transfer the present allocation of natural gas under its Rate Schedules GS-D and WS from City Gas Company of New Jersey (City Gas) to Elizabethtown Gas Company (Elizabethtown), an existing customer of Petitioner, all as more fully set forth in the petition to amend.

Petitioner states that it is authorized to sell and deliver 1,285 Mcf of gas per day under Rate Schedule GS-D and 857 Mcf of gas per day under Rate Schedule WS to City Gas by the Commission's order issued January 19, 1965, in Docket No. CP65-85. An additional 500 Mcf per day under Rate Schedule GS-D was authorized to be sold to City Gas by an amendment, granted on August 24, 1965 to the Commission's order in Docket No. CP64-5, 34 FPC 572.

Petitioner has been advised by Northwest Jersey Natural Gas, Inc. (Northwest Jersey) that on September 30, 1965, City Gas was consolidated into Northwest Jersey, a wholly-owned subsidiary company of Elizabethtown. Northwest Jersey and Elizabethtown have embarked upon a program of integrating the gas supplies of Northwest Jersey with those of Elizabethtown for the stated purpose of obtaining maximum system flexibility, fullest utilization of pipeline supplies, and the lowest system cost. Pursuant to this program, Northwest Jersey has requested Petitioner to transfer the present allocations of gas under Rate Schedules GS-D and WS from City Gas to Elizabethtown.

Upon transfer of the allocations, Petitioner will continue to make deliveries of such gas to Elizabethtown at its Measuring Station 584 and the requirements of Northwest Jersey in the area supplied by this delivery point will be supplied by Elizabethtown.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publications in the Federal Register on April 20, 1966 (31 F.R. 6074) in Docket Nos. CP64-5 and CP65-85. No protest, petition to intervene or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders issued January 19, 1965 in Docket No. CP65-85 and December 19, 1963, as amended, in Docket No. CP64-5 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's orders issued January 19, 1965 in Docket No. CP65-85 and December 19, 1963 in Docket No. CP64-5 as amended August 24, 1965, are amended so as to transfer the present allocation of natural gas under Petitioner's Rate Schedules GS–D and WS from City Gas Company of New Jersey to Elizabethtown Gas Company, an existing customer of Petitioner.

(B) Petitioner shall file with the Commission within 30 days after the issuance of this order a revised service agreement reflecting the requested transfer of gas authorization under Rate Schedules GS–D and WS from City Gas of New Jersey to Elizabethtown Gas Company.

(C) In all other respects said orders shall remain in full force and effect.

(D) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in Section 157.20 of such Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSUMERS POWER COMPANY, DOCKET NO. E–7289

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BOND

(Issued June 24, 1966)

Consumers Power Company (Applicant), filed an application on May 5, 1966, with the Federal Power Commission pursuant to Section 204 of the Federal Power Act seeking authority to issue and sell at competitive bidding First Mortgage Bonds in the aggregate principal amount of $65,000,000. Applicant is incorporated under the laws of the State of Maine and is qualified to do business in Michigan with its principal place of business at Jackson, Michigan, and is engaged in the generation, purchase, distribution and sale of electricity in 1,522 communities and townships including rural areas, and in the purchase, distribution and sale of natural gas in 658 communities and townships all in the State of Michigan.

The New Bonds which Applicant proposes to issue on or about July 20, 1966 will mature on July 1, 1996. The New Bonds will constitute an additional series of First Mortgage Bonds to be issued under the Applicant's indenture dated as of September 1, 1945, and to be supplemented by all indentures supplemental thereto, including a thirteenth supplemental to be dated as of July 1, 1966. The company proposes to sell the New Bonds at competitive bidding in accordance with the applicable requirements of the Commission's Regulations under the Federal Power Act. The interest rate of the Bonds will be determined by the successful bidder in the bids submitted by such bidder upon competitive bidding.

The Applicant intends on or about July 1, 1966, to invite sealed, written proposals for the purchase from it of the $65,000,000 new Bonds. The Public Invitation for Proposals contains the following principal provisions:

Each proposal must be for the purchase of all the Bonds and may be made by a single bidder or by a group of bidders. No bidder may submit or participate in more than one proposal. Each proposal must be presented to the Applicant at the office of Messrs. Winthrop, Stimson, Putnam & Roberts, 40 Wall Street, New York, N.Y., on July 12, 1966 before 11:30 a.m., EDST, and be accompanied by a deposit of $1,300,000.

Each proposal shall specify the rate of interest to be borne by the Bonds, which rate shall be a multiple of 1/8 of 1%; and shall also specify the price (exclusive of accrued interest) to be paid to the Applicant, which price shall not be less than 100% nor more than 102¾% of the principal amount. Each proposal shall provide that the purchaser or purchasers of the Bonds shall pay to the Applicant accrued interest on the Bonds from July 1, 1966, to the date of payment therefor and delivery thereof.

Unless the Applicant shall reject all proposals or exclude a proposal or proposals for reasons set forth in the Public Invitation for Proposals, it will accept the proposal which provides for the lowest cost of money.

According to the Applicant the net proceeds from the sale of the New Bonds will be used first to discharge short-term bank loans to be incurred prior to the sale of the New Bonds to secure funds for construction purposes (which at April 30, 1966, amounted to $14,000,000), and second to provide a portion of the funds required for the construction or acquisition of permanent improvements, extensions and additions to the Applicant's property. The plans call for the expenditure of approximately $141.7 million in 1966 for the construction or acquisition of property additions. The 1966 expenditure includes an estimated $30.5 million on generating stations, including (1) an estimated $29 million on the second unit of 385 mw rated capacity of the James H. Campbell plant, located 10 miles north of Holland, Michigan, (2) an estimated $381,500 on the circulating Water Intake Jetty improvements at the James H. Campbell Plant, (3) an estimated $4,400,000 on the proposed Palisades Generating Plant, to be located 5 miles south of South Haven, Michigan, (4) an estimated $4,482,600 on the proposed Gaylord Generating Plant, to be located 1 mile west of Gaylord, Michigan, and (5) $1,210,800 for miscellaneous generation; $16,787,900 for electric transmission line and substation additions; $24,003,700 for electric distribution line and substation additions; $54,205,500 for gas properties; and $7,147,200 for general and miscellaneous.

Written notice of the application has been given to the Michigan Public Service Commission and the Governor of that State. Notice has also been published in the Federal Register on May 18, 1966 (31 F.R. 7263), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before June 8, 1966 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The Applicant owns and operates facilities which may be facilities for the transmission of electric energy in interstate commerce and it may be a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP66-234 AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-278

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued June 24, 1966)

Eastern Shore Natural Gas Company (Eastern Shore), filed in Docket No. CP66-234 an application on January 19, 1966, supplements thereto on February 8, April 19, April 21, and an amendment thereto on May 20, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of additional volumes of natural gas to one of its existing customers, all as more fully set forth in the application, supplements and amendment thereto.

Eastern Shore proposes to construct 14.5 miles of 10-inch pipeline extending from a point of interconnection with facilities of Transcontinental Gas Pipe Line Corporation at Hockessin, Delaware, to a point on Applicant's system near Wilmington, Delaware. Eastern Shore states that these additional facilities will function as a loop on the northern end of its system. Eastern Shore further proposes to increase its firm deliveries to Stauffer Chemical Company by 1,350 Mcf of gas per day. The facilities proposed are needed to render this additional service and to provide a greater measure of operating flexibility.

The total estimated cost of Eastern Shore's proposed facility is $700,000, and will be financed through funds generated internally and by the sale of short-term notes, with permanent financing to be arranged at a later date.

On February 24, 1966, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP66–278 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Transco seeks authority to construct and operate a sales meter and appurtenant equipment to be located within the building housing the existing Hockessin delivery point to Delaware Power and Light Company on Transco's 16-inch transmission sales lateral near the Pennsylvania-Delaware state line in Chester County, Pennsylvania. The application states that said sales meter will be utilized as an additional point of delivery for natural gas service to Eastern Shore Natural Gas Company (Eastern Shore), an existing customer, for resale.

Transco states that Eastern Shore has requested the proposed new delivery point in order to tie into the 14.5 miles of 10-inch pipeline for which Eastern Shore seeks authorization in its application filed in Docket No. CP66–234 on January 19, 1966. Eastern Shore has advised Transco that the estimated peak day volume of natural gas to be delivered at this point in the third year of proposed operations is 10,600 Mcf and that volumes of gas purchased by Eastern Shore from Transco at this point will be out of allocations previously authorized by the Commission.

The total estimated cost of Transco's proposed facilities is $47,000, which cost will be financed from general funds.

On April 7, 1966, Transco filed an amended service agreement with Eastern Shore and requested an effective date of May 1, 1966. The present agreement, dated November 1, 1965, provides for an increase in contract demand from 17,550 Mcf to 18,200 Mcf per day commencing May 1, 1965. Inasmuch as the increased volumes cannot be utilized until the authorizations requested herein are granted and the facilities constructed, Transco proposes that increased deliveries be postponed until July 1, 1966. Waiver of notice requirements are requested.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 23, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas

company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12059, *et al.* (18 FPC 710).

(2) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G–704 (7 FPC 24).

(3) The proposed transportation, construction and operation of facilities by Eastern Shore and Transco and sale and delivery of natural gas by Transco as hereinbefore described, and as more fully described in the applications, supplements and amendment filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities by Eastern Shore and Transco and sale and delivery of natural gas by Transco are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Eastern Shore and Transco are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Eastern Shore's and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing the Revised Service Agreement filed by Transco on April 7, 1966, and with respect thereto to waive the notice requirements of the Commission's Rules and Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Eastern Shore in Docket No. CP66–234, authorizing the construction and operation of facilities and the transportation and delivery of natural gas as hereinbefore described and to Transco authorizing the construction and operation of facilities for the sale of natural gas in Docket No. CP66–278 all as more fully described in the applications and exhibits in these proceedings, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Eastern Shore's and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) Additional firm deliveries of natural gas by Eastern Shore in Docket No. CP66–234 shall be limited to 1,350 daily to Stauffer (total of 6,550 Mcf daily).

(E) The certificate issued Eastern Shore in Docket No. CP66–234 shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) The Revised Service Agreement filed by Transco on April 7, 1966, is accepted for filing effective May 1, 1966, and the notice requirements of the Commission's Regulations with respect thereto are waived.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HAMILTON NATURAL GAS COMPANY, INC., AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-87

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 24, 1966)

On September 29, 1965, Hamilton Natural Gas Company, Inc. (Applicant), filed in Docket No. CP66-87 an application and supplemental information on March 16, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission requiring Panhandle Eastern Pipe Line Company (Respondent) to make a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant its natural gas requirements for the Town of Sheridan, Hamilton County, Indiana, and its environs, all as more fully stated in the application.

Applicant proposes the connection between a 6-inch lateral line, which Applicant will own and operate as an integral part of the distribution system with the facilities of Respondent at a point approximately 10.5 miles southeast of Sheridan in Hamilton County.

The estimated cost of construction of the lateral and the distribution system is $500,000, which will be financed with First Mortgage Bonds of $325,000 and equity capital for the balance.

The estimated natural gas requirements during the first three years of operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	94,060	109,662	125,264
Peak day (Mcf)	990	1,161	1,331

On October 1, 1965, Respondent was duly advised of the application filed in this proceeding, and due notice of the filing and opportunity for hearing thereon has been given by publication in the Federal Register on March 9, 1966 (31 F.R. 4174). No protest, petition to intervene or request for hearing has been filed in this proceeding.

On July 27, 1965, the Town of Sheridan, Indiana, granted Applicant a franchise to construct and operate the necessary facilities and to sell gas to the public in Sheridan.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas

company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 1,331 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) The requirement that Respondent serve Applicant as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in the Town of Sheridan and environs in Hamilton County, Indiana, within one year from the date of issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Hamilton Natural Gas Company, Inc. as herein described, and to sell and deliver up to 1,331 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Panhandle Eastern's currently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSOURI UTILITIES COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-230

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 24, 1966)

On January 19, 1966, Missouri Utilities Company (Applicant) filed in Docket No. CP66-230 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to sell and deliver to Applicant up to 4,897 Mcf of natural gas per day for resale and distribution in the Cities of Eldon and Olean, Miller County, Missouri; the Cities of Versailles and Stover, Morgan County, Missouri; and the unincorporated Village of High Point, Moniteau County, Missouri, all as more fully set forth in the application.

Respondent presently supplies Applicant with natural gas for resale in the City of California, Moniteau County, Missouri, from an existing tap on Respondent's Jefferson City lateral pipeline four miles north of the City of California on Missouri Highway 87.

Applicant will construct approximately 52 miles of 6-inch transmission pipeline extending from the above-mentioned tap to the distribution systems to be constructed by it in each of the communities to be served. Panhandle will expand its existing California meter station to handle the increased volumes.

The total estimated volumes of natural gas necessary to meet Applicant's annual and maximum day requirements during the first three years of proposed operations in the aforementioned cities and village are as follows:

	First year	Second year	Third year
Annual (Mcf)	126,039	319,209	432,789
Peak day (Mcf)	2,612	4,119	4,897

Respondent will sell the the proposed volumes of natural gas to Applicant pursuant to its present Rate Schedule G–2.

The total estimated cost of the transmission facilities and the distribution systems to be constructed by Applicant is $1,183,250, which will be financed from cash on hand and from proceeds from unsecured short-term bank loans. The unsecured bank loans will subsequently be financed with some form of permanent financing such as stock or mortgage bonds. Applicant will also reimburse Respondent approximately $9,000, which is the estimated cost of enlarging Respondent's California meter station.

The Public Service Commission of the State of Missouri issued a certificate of convenience and necessity authorizing the proposed construction and service. The effective date of the state certificate is December 28, 1965.

Franchises covering the proposed operations have been granted to Applicant by each of the incorporated communities to be served.

On February 3, 1966, Respondent filed an answer to the application and stated that it has no objection to the proposal.

Due notice of the filing of the application was published in the Federal Register on February 8, 1966 (31 F.R. 2501). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Respondent, Panhandle Eastern Pipe Line Company, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to sell and deliver up to 4,897 Mcf of natural gas per day to Applicant for resale and distribution in the communities of Eldon, Olean,

Versailles, Stover and High Point, Missouri, all as hereinbefore described and as more fully described in the application.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to sell and deliver up to 4,897 Mcf of natural gas per day for resale and distribution in the communities of Eldon, Olean, Versailles, Stover and High Point, Missouri, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the California connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7293

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued June 24, 1966)

Northwestern Public Service Company (Applicant) filed an application on May 19, 1966, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $3,500,000 principal amount of First Mortgage Bonds, due 1966.

The Applicant, a Delaware corporation, authorized to do business in North Dakota, South Dakota, and Nebraska, is engaged in generating, transmitting, distributing and selling electric energy in the east central portion of South Dakota, where it furnishes electric service in 108 communities.

The $3,500,000 First Mortgage Bonds are to be dated July 1, 1966, and are to mature on July 1, 1996. The interest rate will be determined by the most favorable bid received and accepted.

The new Bonds are to be issued under an Indenture of the Applicant, dated August 1, 1940, to The Chase Manhattan Bank (National Association) and J. J. O'Connel, as Trustee, successor to the original Trustees, as supplemented by seventeen Supplemental Indentures, and as to be further supplemented by a Supplemental Indenture dated July 1, 1966.

The Applicant intends on a date in the latter part of June to invite written bids for the purchase of the $3,500,000 new Bonds. The Statement of Terms and Conditions Relating to Bids will contain the following principal provisions:

Each bid, which may be made by a single bidder or by a group of bidders, must be for the purchase of all the Bonds. No bidder or group of bidders may submit or participate in more than one bid. Bids must be presented to the Applicant at Room 1705, 231 South La Salle Street, Chicago, Illinois, before 10 A.M., CDST, on July 13, 1966, and must be accompanied by deposits of $105,000.

Each bid shall specify the coupon rate to be borne by the Bonds, which rate shall be a multiple of ⅛ of 1%; and shall specify the price, exclusive of accrued interest, to be paid to the Applicant, which bid shall not be less than 99% or more than 102¾% of principal amount, and shall provide that accrued interest from July 1, 1966 to the date of payment therefor and delivery thereof will be paid by the purchaser or purchasers to the Applicant.

Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions, it will accept the bid which provides for the lowest annual cost of money.

Proceeds from the issuance and sale of the Bonds will be used to retire $1,300,000 in bank loans and to finance in part Applicant's 1966 construction program which is presently estimated at $5,300,000, of which approximately $2,375,000, is for routine extensions and additions to its existing electric system in South Dakota.

The principal items of the 1966 program are construction of new 115 kv lines and substations and conversion of existing 69 kv lines to 115 kv operation.

Written notice of the application has been given to the Nebraska State Railway Commission, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission and to the Governors of these states. Notice of the application was also published in the Federal Register on June 4, 1966, (31 F.R. 7987), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before June 20, 1966, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No protest or petition has been filed.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued September 19, 1958, *In the Matter of Northwestern Public Service Company*, Docket No. E-6838 (20 FPC 373).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the applications, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal

Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ANNUAL REPORTS OF CLASSES A, B, C AND D NATURAL GAS COMPANIES SUBJECT TO THE NATURAL GAS ACT—MISCELLANEOUS AMENDMENTS TO F.P.C. FORMS NO. 2 AND NO. 2-A, DOCKET NO. R-283

ORDER NO. 310-A

AMENDING §§ 260.1(c) AND 260.2(c) OF THE COMMISSION'S REGULATIONS

(Issued June 24, 1966)*

Order No. 310, issued in this proceeding on December 8, 1965 (34 FPC 1436, 30 F.R. 15465), amended the Annual Report FPC Forms Nos. 2 and 2-A by, among other things, deleting certain schedules and changing the "Verification" page to an "Attestation." The lists of schedules contained in the forms which appear in paragraph (c) of both §§ 260.1 and 260.2 of the regulations should have been amended so as to corerctly list the current contents of the report forms. We are here supplying the inadvertent omission.

The Commission finds:

Notice of these amendments prior to adoption is unnecessary and good cause exists for making them effective immediately.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Part 260, Subchapter G, Chapter I of Title 18 of the Code of Federal Regulations, is amended by revising §§ 260.1 and 260.2 as follows:

(1) In paragraph (c) of § 260.1, the fourth schedule titles "Special Funds," "Special Deposits," "Notes Receivable" and "Accounts Receivable" are deleted and the last title, "Verification," is changed to "Attestation."

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*Published in the Federal Register on July 1, 1966 (31 F.R. 9062).

(2) In paragraph (c) of § 260.2, the last title, "Verification," is changed to "Attestation."

(B) The amendments here adopted shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 2394

ORDER APPROVING REVISED PROJECT EXHIBIT M

(Issued June 24, 1966)

On March 16, 1966, Wisconsin Michigan Power Company, licensee for Project No. 2394, filed for Commission approval a revised Exhibit M showing the project facilities as they now exist and describing equipment to be installed during 1966. The project, known as the Chalk Hill Project, is located on the Menominee River in Menominee County, Michigan, and Marinette County, Wisconsin, in the vicinity of Amburg, Wisconsin, and the Village of Stephenson, Michigan.

The licensee proposes to remove the existing switchboard in the powerhouse and to install a complete local and remote control system with the supervisory control master station to be located approximately three miles downstream at the licensee's licensed White Rapids Plant, designated as Project No. 2357, Commission staff concurs with the licensee that the new system will improve the protection of plant equipment, insure more economical operation, and provide automatic voltage regulation.

The Commission finds:

(1) Revised Exhibit M (March 16, 1966) consisting of three typewritten pages entitled "General Descriptions of Project and Equipment" conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) Exhibit M (August 12, 1963) consisting of three typewritten pages entitled "General Descriptions of Project and Equipment," now part of the license and which is superseded, should be eliminated from the license for the project.

The Commission orders:

The revised exhibit described in finding (1) above is hereby approved as part of the license for Project No. 2394, and the exhibit described in finding (2) above as superseded is hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

DECLARATORY ORDER WITH RESPECT TO QUALITY STATEMENTS

(Issued June 27, 1966)

The producers listed in the Appendix have submitted quality statements reflecting the quality of gas under rate schedules pertaining to sales of gas to West Texas Gathering Company (West Texas) in the Permian Basin Area. West Texas gathers, transports and resells the gas to El Paso Natural Gas Company (El Paso) at El Paso's Keystone Treating Plant.[1] These quality statements were required under paragraph (F)(1) of Opinion No. 468, 34 FPC 159, as amended.[2]

The quality statements submitted by the producers show that the gas does not meet the standards prescribed in Opinion No. 468 with respect to sulphur and water content. Each quality statement, with the exception of the one submitted by Socony Mobil, reflects an agreed upon treating cost of 0.11¢ per Mcf. Such treating costs relate to the treating operations of El Paso and are the same as those utilized by El Paso in determining the price adjustments for quality deviations with respect to gas purchased directly by it in Permian. These methods were approved by the Commission in its June 13, 1966 order in Docket No. AR61-1, *et al.*, *supra*, p. 960.

The producers, except for Socony Mobil, claim an offsetting credit for Btu content between 1000 and 1050 against the agreed upon 0.11¢ treating cost. Such an adjustment is not permissible under our *Permian* opinion.[3] We shall therefore require these producers to submit new quality statements reflecting only the agreed upon downward adjustment of 0.11¢ per Mcf.

Socony concedes that the gas sold by it to West Texas contains the same quality deficiencies with respect to sulphur and water content that are found in gas sold by the other producers involved here. It apparently believes, however, that West Texas, as the buyer, should properly bear such treating cost. This is not correct. Under Opinion No. 468 a producer, such as Socony, which sells non-pipeline quality gas should make a downward price adjustment for any quality deficiencies. Where the purchaser from a producer is also a producer, such purchaser should reflect a downward price adjustment for any quality deficiencies contained in the gas it resells, but this does not relieve the initial producer of its obligation with respect to quality deficiencies. Nor is the producer relieved of its obligation in this regard when the immediate pipeline purchaser does not treat the gas but the secondary pipeline purchaser does treat it. It thus makes no difference whether West Texas is treated as a producer or a pipeline for the purpose of deciding the question raised by Socony Mobil.[4] In any event, Socony Mobil is required to make the necessary adjustment. We shall therefore require Socony Mobil to file a new quality statement reflecting a downward price adjustment for the quality deficiencies in gas sold by it to West Texas.

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[1] The gas is not treated by West Texas prior to delivery to El Paso, but is treated by El Paso at the Keystone Plant.

[2] By order issued June 13, 1966, in Docket No. AR61-1, *et al.*, the Commission took action with respect to quality statements relating to sales to El Paso, Northern Natural and Transwestern which reflected full agreement between the producer and purchaser.

[3] Order issued March 23, 1966, in Area Rate Proceeding, Docket No. AR61-1, 35 FPC 411 (Phillips Petroleum Company, Docket No. G-20405); and order issued on June 13, 1966, in Docket No. AR61-1, *et al.*

The Commission orders:

(A) The quality statement submitted by Socony Mobil for sales under its FPC Gas Rate Schedule No. 201 is rejected.

(B) The quality statements listed in the Appendix, except for the one submitted by Socony Mobil, are accepted except insofar as upward adjustments are proposed for gas delivered with a Btu content between 1000 and 1050. The quality statements insofar as they propose such upward adjustments are rejected.

(C) The producers listed in the Appendix, including Socony Mobil, shall submit within 30 days of the date of issuance of this order a new quality statement for each sale covered therein reflecting a downward price adjustment of 0.11¢ per Mcf for sulphur and water content. Such quality statements shall not reflect any offsetting credit for Btu content between 1000 and 1050 and shall comply with the requirements of paragraph (F)(1) of Opinion No. 468, as amended.

(D) Any producer filing a new quality statement, as provided in paragraph (C) above, shall also file a new refund report within 45 days of the date of issuance of this order to reflect any changes that may be necessary if the sale related to such quality statement is involved in a Section 4(e) suspension proceeding consolidated in Opinion No. 468. Such refund report shall comply with the provisions of paragraph (I) of Opinion No. 468.

APPENDIX

Producer	Rate schedule No.	Supplement No.
Amerada Petroleum Corporation	67	4
The Atlantic Refining Company	229	3
	262	3
Champlin Petroleum Company	78	4
Cities Service Oil Company	124	9
Continental Oil Company	*160	4
Gulf Oil Corporation	138	4
Humble Oil & Refining Company	*132	6
Pan American Petroleum Corporation	**220	4
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company	*19	11
Shell Oil Company	*168	6
Skelly Oil Company	159	3
Socony Mobil Oil Company, Inc.	201	3
Sun Oil Company	178	1
Texaco Inc.	179	3
Tidewater Oil Company	79	4
Union Oil Company of California	118	4

*(Operator), et al.
**Et al.

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[4] By Commission letter-order issued June 27, 1966, in Docket No. G–14302, West Texas was classified as a pipeline under the Commission's Regulations under the Natural Gas Act, and a quality statement is therefore not required.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. E-7265

ORDER AUTHORIZING LEASE OF ELECTRIC FACILITIES

(Issued June 27, 1966)

Arizona Public Service Company (Applicant), filed an application on January 13, 1966, with the Federal Power Commission, seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to lease for a period of 25 years the electric distribution system of the City of Williams, Arizona (Williams).

Applicant is incorporated under the laws of the State of Arizona, is qualified to do business in Arizona and New Mexico, and is engaged in the generation, purchase, interchange, transmission, sale at wholesale, and distribution of electric energy in ten of Arizona's 14 counties.

Williams is a municipal corporation of the State of Arizona which owns and operates an electric distribution system. It purchases energy to meet its requirements from the Applicant and in 1964 served approximately 965 customers.

According to the application, Applicant proposes to pay a rental of $130,000 per year, on a monthly basis of $10,833.33 per month, plus 2½% of gross revenues received within Williams in excess of $325,000 per year. A franchise to serve Williams pursuant to the lease has been approved by the electors of Williams. Applicant estimates that the depreciated original cost of the facilities to be leased is $190,000.

Basically the proposed transaction is an acquisition of facilities and based on the estimated depreciated original cost of the facilities involved ($190,000), the average annual cost for depreciation, return, and income taxes on the return, over the 25-year lease period, is $19,000 compared to the proposed annual rental payment of $130,000. Total costs over the 25 years, computed on the basis of an acquisition, are $475,000 compared to lease rental payments of $3,250,000 over the same period.

After the consummation of the proposed transaction, Applicant will place in effect its rate schedules presently applicable to the Flagstaff area. According to the Applicant, this will result in an immediate reduction of rates for 862 of the 978 customers presently served by Williams including all of the 761 residential customers of Williams. One hundred three commercial and industrial customers will have a rate increase ranging from 0.1% to 34.1%. Of this group 36 will have an increase of up to 10%; 45 will have an increase between 10 and 20%; and 22 will have an increase between 20 to 34.1%.

The appropriate retail rate structure of a public utility is not a matter subject to this Commission's jurisdiction. The Arizona Corporation Commission, however, held a hearing on this matter on February 17, 1966, in the Town of Williams and on February 28, 1966, that Commission issued a certificate of public convenience and necessity and approved the proposed rate schedules.

Applicant represents that with its larger organization and inventory of material it will be able to provide better services to the customers of Williams. Applicant proposes to make available to Williams the services of its Area Development Department to promote the growth of local business and industry.

Written notice of the application has been given to the Arizona Corporation Commission and the Governor of that State. Notice was also published in the Federal Register on January 29, 1966 (31 F.R. 1218), stating that any person desiring to be heard or to make any protest with reference to said application should on or before February 14, 1966, file petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10), with the Federal Power Commission, Washington, D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated outside Arizona as heretofore described and set forth in the Commission's order issued July 20, 1965, *Arizona Public Service Company*, Docket No. E-7226, 34 FPC 78. Applicant, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Applicant will indirectly merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Williams, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed lease of facilities by Applicant as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed lease by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall account for the transaction by charging the annual payments under the lease to Account 426, Other Income Deductions, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–99

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 27, 1966)

On April 20, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP64–99 a petition to amend further the order of the Commission issued in said docket on February 18, 1964, 31 FPC 422, as amended on August 7, 1964, October 21, 1964, December 15, 1964, 32 FPC 539, 1152, 1424, and June 2, 1965, 33 FPC 1160, by authorizing Petitioner to continue to participate, as to its one-third interest, in certain additional testing activities of the Jackson Prairie Storage Unit, including an increase in the volumetric limitation on the inventory of gas in said storage reservoir from 2,000,000 Mcf (14.73 psia) to 3,000,000 Mcf (14.73 psia), for a period continuing through June 30, 1967, or until divestiture of Petitioner's Northwest Division System, whichever first occurs and to construct and operate certain facilities to be owned solely by Petitioner, all as more fully set forth in the petition to amend in this proceeding.

The order of February 18, 1964, as amended, authorized Petitioner to construct and operate certain facilities; to sell and deliver natural gas to Washington Natural Gas Company (Washington Natural) and Washington Water Power Company (Water Power) and, with respect to Petitioner's one-third interest therein, to share in the cost of facilities to be constructed and operated by Water Power, all solely for the purpose of testing the Jackson Prairie Storage Unit, Lewis County, Washington. Further the total estimated cost, which is to be shared by the three participants, of the project was $3,579,000. The order, as amended, also limited the gas inventory in the storage reservoir to 2,000,000 Mcf (14.73 psia) and terminated the authorization upon the divestiture of Petitioner's Northwest Division System, but not beyond June 30, 1966.

Petitioner, Washington Natural, and Water Power, the latter continuing as Storage Unit Operator, have agreed to increase their individual commitments from $1,200,000 to $2,000,000 to finance the proposed expanded testing program. The proposed continued testing will require (a) work-over of three existing wells and drilling of nine additional wells, (b) replacement of two existing 150 horsepower compressor units in the storage field with two 1,068 horsepower units, and (c) installation of a portable-type dehydration unit. The estimated cost of these additional facilities is $2,514,800. Through December 31, 1965, $3,374,200 has been jointly expended on the testing of the storage field. Petitioner also proposes to modify an existing mainline tap, owned solely by itself, through enlargement and replacement of metering facilities at an estimated cost of $47,900. Petitioner requests that it be authorized to continue to participate in the testing program and to expend up to $2,000,000 as its share of said program, exclusive of the cost of the proposed metering facilities.

Petitioner states that the continued testing of the storage field is required in order to test further pressure performance and water encroachment characteristics of the present gas storage zone and in order to determine the feasibility of storage utilization of two lower zones.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 7, 1966 (31 F.R. 6846). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1965, in Docket No. CP64–99, as amended, is further amended by authorizing:

(1) With respect to Petitioner as an undivided one-third interest participant, the extension of the period for joint testing of the Jackson Prairie Storage Reservoir through June 30, 1967, or until divestiture of Petitioner's Northwest Division System, whichever first occurs;

(2) The increase in the volumetric limitation on the inventory of gas in the storage reservoir from 2,000,000 Mcf (14.73 psia) to 3,000,000 Mcf (14.73 psia);

(3) The expansion of the testing facilities and activities of the Jackson Prairie Storage Reservoir as proposed with Petitioner increasing its one-third commitment to $2,000,000, exclusive of the amount of $47,900 for Petitioner's proposed metering facilities; and

(4) The modification, as proposed in the subject petition to amend, of an existing mainline tap, owned solely by Petitioner, through enlargement and replacement of metering facilities.

(B) The authorization hereinabove granted is conditioned upon Petitioner's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly paragraph (f) of Section 157.20 of such Regulations.

(C) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KODIAK ELECTRIC ASSOCIATION, INC., PROJECT NO. 2434

ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued June 27, 1966)

Application was filed on May 20, 1966 by Kodiak Electric Association, Inc., permittee for proposed Project No. 2434, for a one-year extension of the period of the permit. The preliminary permit was issued by the Commission on June 19, 1964, 31 FPC 1571, for a period of 24 months, effective June 1, 1964. The project is proposed to be located on Terror River at the outlet of Terror Lake, in the Falls Creek and Shotgun Creek drainage basins, and Kizhuyak Canyon, Borough of Kodiak Island, Alaska, affecting lands of the United States within the Kodiak National Wildlife Refuge and other lands of the United States.

The permittee states that it had hoped to apply for license prior to the expiration of its 24-month permit, but it became necessary to use supplemental financing for the final phases of engineering on the definite project report. A request was made to REA, the permittee adds, for permission for supplemental financing, but permission has not been, nor is it likely to be received in time to complete the application for license prior to the present expiration date of the permit.

Weather conditions have restricted field work to the summer and fall months. It appears that the permittee has proceeded diligently with the investigations under the permit.

The Commission finds:

It is not inconsistent with the public interest to extend the period of the permit as applied for.

The Commission orders:

The period of the preliminary permit for proposed Project No. 2434 is hereby extended through May 31, 1967.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G-13018; EL PASO NATURAL GAS COMPANY, G-13019; EL PASO NATURAL GAS COMPANY, CP66-27; NORTHWEST PIPELINE CORPORATION, CP66-28; NORTHWEST PIPELINE CORPORATION, CP66-29; NORTHWEST PIPELINE CORPORATION, CP66-30

ORDER GRANTING MOTION FOR CONTINUANCE

(Issued June 27, 1966)

On May 26, 1966, the presiding examiner certified to the Commission a motion made by the Commission's staff at a prehearing conference held on May 24, 1966, seeking to continue these proceedings until after the United States Supreme Court has ruled on appeals now pending before it in the matters of the *People of the State of California, et al.* v. *El Paso Natural Gas Company*. On January 17, 1966, the Supreme Court noted probable jurisdiction in those matters. Answers in opposition to the Staff's motion were filed by El Paso Natural Gas Company (El Paso), Northwest Pipeline Corporation (Northwest), the Public Utility Commissioner of Oregon and Southern California Gas Company and Southern Counties Gas Company of California. Southern California Edison Company filed a response to those answers, but took a neutral position on the question of a continuance.

This matter is pending before the Commission on applications filed pursuant to an order of the District Court of the Southern District of Utah, approving a decree requiring, *inter alia*, divestiture by El Paso of its Pacific northwest properties. As a result of that decree, Northwest was created to acquire and operate the facilities of El Paso used in its northwest division, El Paso having been ordered by the Supreme Court to be divested without delay of the properties acquired by merger with Pacific Northwest Pipeline Corporation. Following that order, issued April 6, 1964, El Paso proposed a plan for divestiture to the Utah District Court. Upon agreement between El Paso and the U.S. Department of Justice, that Court entered its decree of divestiture. Appeals were taken by Southern California Edison Company, Cascade Natural Gas Company and the People of the State of California from actions of the District Court denying their intervention in the court proceedings. The Supreme Court on January 17, 1966, noted probable jurisdiction.

In its decision in *People of the State of California* v. *F.P.C.*, 369 U.S. 482 (1962), the Supreme Court found that pending a determination of the anti-trust proceedings brought by the Department of Justice against El Paso, this Commission should have stayed action.[1] Having noted probable jurisdiction in the pending appeals, it is possible that the Supreme Court will remand this matter to the District Court for further proceedings. To continue with the pending proceeding before this Commission while the matter is before the Supreme Court could have unfortunate results. First, it could result in a total waste of time, effort and money on behalf of the parties to the proceeding and the Commission's Staff, for, if the matter is remanded to the District Court and a different decree results, it is clear that any proceeding before this Commission involving Northwest would be in vain. It is impossible to predict what new decree of divestiture would result. Second, in its 1962 decision the Court made clear that the processing of this matter by the Federal Power Commission could prejudice the outcome of a Court matter on the anti-trust question. 369 U.S. at 489.

El Paso and others suggest that the mere processing of this case would not be prejudicial because a decision by the Commission might not be arrived at prior to the time of the Court's decision. This may or may not be true. If this case were ripe for decision prior to the time the Court's action were taken, it is apparent El Paso would have us at that time stay any action by the Commission pending a Court action, thus the ultimate decision in this matter could conceivably be made upon a thoroughly stale record.

While we recognize that the Court did order divestiture without delay, we cannot perceive that any real harm would be occasioned by postponing this proceeding until after a Supreme Court's determination of the pending appeals. We must attempt to balance the waste of manpower, time, money and effort by those involved in trying the divestiture proceeding and the possibility of ruling upon an outdated record against the delay that would be occasioned by our holding off further proceedings in this matter pending disposition by the Supreme Court. We feel that the preferable course would be to delay any further proceedings. We recognize that considerable monies have already been expended by the parties in gathering and preparing material and exhibits. However, it seems to us that further such expenditures would not now be justified.

All in all, it would appear that the consumer will not be substantially affected by the delay which we feel is necessary because of the posture of the Supreme Court appeals and that, on balance, all parties would be benefited by the postponement of further proceedings in this divestiture case.

Accordingly, we shall grant the staff motion to continue the proceedings in this case until the Supreme Court has acted.

The Commission orders:

The proceedings in the above-named dockets shall be continued until further notice of this Commission.

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[1] The Court stated: "The orderly procedure is for the Commission to await decision in the antitrust suit before taking action."

THE JUPITER CORPORATION, DOCKET NOS. RI63-212, AND G-16679; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER APPROVING RATE SETTLEMENT, PRESCRIBING REFUNDS, ISSUING CERTIFICATE AND TERMINATING PROCEEDINGS

(Issued June 28, 1966)*

Syllabus

In proceedings initiated under Sections 5(a) and 7 of the Natural Gas Act, Commission *approves* rate settlement; *prescribes* refunds; *issues* certificate of public convenience and necessity; *denies* application for certificate and *terminates* proceedings.

Howard R. Koven, Justin R. Wolf, Eugene E. Threadgill and *William W. Brackett* for The Jupiter Corporation.

William C. Braden, Jr. and *B. J. Williamson* for Tennessee Gas Transmission Company.

J. Harry Mulhern, Edward S. Kirby and *James R. Lacey* for Public Service Electric & Gas Company.

Edward M. Barrett, Bertram D. Moll and *Morton L. Simons* for Long Island Lighting Company.

Kenneth Heady, John R. Rebman and *Stanley L. Cunningham* for Phillips Petroleum Company.

Lynn Adams for Kerr-McGee Oil Industries, Inc.

Kent H. Brown and *Charles J. Cox* for New York State Public Service Commission.

Francis J. McShalley for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

The Jupiter Corporation (Jupiter), on May 25, 1966, filed an amended offer of settlement in Docket Nos. RI63-212, and G-16679.[1] The proceeding in Docket No. RI63-212 was initiated pursuant to Section 5 of the Natural Gas Act,[2] and involves an investigation of the rates and charges of Jupiter for the transportation and sale of natural gas in the Rollover Field, South Louisiana. Jupiter transports gas produced by the Union Oil Company of California (Union) (successor to The Pure Oil Company) from Union's offshore Rollover Platform to an onshore line owned by Tennessee Gas Pipeline Company (Tennessee)[3] which purchases the gas from Union. Jupiter also purchases gas from the Phillips Petroleum Company and Kerr-McGee Corporation (Phillips-Kerr-McGee) at their offshore platforms and transports it onshore where it sells and delivers it to Tennessee.[4] Jupiter currently charges 3.4¢ per Mcf for transporting gas for Union and retains from its selling price to Tennessee, 2.4¢ per Mcf over and above the price it pays to Phillips-Kerr-McGee.

Docket No. G-16679 involves an application by Jupiter for a permanent certificate of public convenience and necessity for authority to sell and deliver to Tennessee the gas which it purchases from Phillips-Kerr-McGee in the Rollover Field. Jupiter currently makes such sale under a temporary certificate issued May 24, 1962, as amended by Commission Opinion No. 470 and order, issued August 11, 1965.[5]

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* Initial decision appears on p. 1095. Clarified and rehearing denied by order issued August 22, 1966, 36 FPC 495.

[1] Jupiter's initial offer of settlement, filed March 28, 1966, was the subject of settlement conferences which resulted in the filing of its amended offer.

[2] By order issued December 5, 1962, 28 FPC 942.

[3] Jupiter's FPC Rate Schedule No. 7.

[4] Jupiter's FPC Rate Schedule No. 8.

Docket No. CP65-58, which was consolidated with Docket No. RI63-212,[6] involves a certificate application of Tennessee for authority to lease and operate at a cost of $1,200,000 annually, the offshore facilities in the Rollover Field and related onshore facilities now owned and operated by Jupiter.

The Examiner, in his initial decision in Docket No. RI63-212, *et al.*, issued January 5, 1966, found a just and reasonable transportation rate of .632¢ per Mcf based upon an annual cost of service of $334,859. The Examiner in lieu of providing a unit rate, prescribed a monthly charge equal to one-twelfth of the cost of service. The Examiner denied Tennessee's certificate application in Docket No. CP65-58, principally for the reason that the proposed annual rental fee was approximately four times the cost of service. Exceptions to the Examiner's decision were filed by Jupiter, Tennessee, the staff and certain of the interveners.

Jupiter's amended offer of settlement in summary proposes as follows:

(1) Jupiter will file a proposed rate schedule providing for a charge of 1.0¢ per Mcf (at 15.025 psia) for transporting gas for Union; (2) Jupiter will execute and file a supplement to its Rate Schedule No. 8 providing for a contractual sale price to Tennessee of 19.5¢ per Mcf for the remaining portion of the current pricing period and for the next four year price redetermination period; (3) the effective date of these reduced rates will be May 15, 1966; (4) Jupiter will accept a permanent certificate in Docket No. G-16679 with a condition requiring that Jupiter deposit in an escrow account an amount equal to two-thirds of the Louisiana Severance Tax reimbursement collected from Tennessee between December 1, 1958 and July 31, 1965, together with interest at 7 percent from the date of collection until the date of the Commission's order herein, it is estimated that such escrow amount will total $1,602,298.

Jupiter also states that the 19.5 cents per Mcf contractual price to Tennessee would be subject to change only in the event and to the extent that a valid action by the Federal Power Commission authorizes a price for gas sold by Phillips-Kerr-McGee at a level different from 18.5¢ per Mcf.

Jupiter further represents that the offshore pipelines owned by Jupiter interconnecting Tennessee's pipeline with the offshore platforms owned by Union Oil Company of California, Phillips Petroleum Company and Kerr-McGee Industries, Inc. together with Jupiter's separation plant, will be transferred to a new company, which will file an appropriate application pursuant to Section 7(c) of the Natural Gas Act to acquire and operate these facilities and provide jurisdictional sales and services at the settlement rates herein proposed. Jupiter makes its amended offer with an express understanding that Jupiter does not waive its rights with respect to the collection from Phillips-Kerr-McGee and Union of compensation for services Jupiter performs in transporting, separating or storing those producers' condensates and liquefiable hydrocarbons. Jupiter further states that if its amended offer of settlement is accepted and approved by the Commission, it will move to dismiss its appeal in the U.S. Court of Appeals for the 7th Circuit in *The Jupiter Corporation v. F.P.C.*, Cases Nos. 15396 and 15469.[7]

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[5] This amendment conditioned the temporary certificate to a price of 20.9¢ per Mcf as of July 23, 1964, 34 FPC 486.

[6] Order issued October 30, 1964, unreported.

None of the customers-interveners of Tennessee nor the intervening state commissions oppose the settlement offer. Union, and Phillips-Kerr-McGee state that they do not intend to negotiate their contracts with Jupiter to reimburse Jupiter for transporting, separating or storing the producers' condensate and liquefiable hydrocarbons, alleging that this service is nonjurisdictional and not properly a part of Jupiter's settlement. Tennessee does not oppose the offer, but states that its position is without prejudice to its rates under its settlement agreement in Docket Nos. G–11980, G–17166, and G–19983.

Jupiter shows that its proposed settlement rate of 1.0¢ per Mcf would produce annual revenues of $494,075 based upon average volumes of gas transported over the three year period 1963–1965. It claims an annual jurisdictional cost of service of $575,056 which is $240,197 over and above the Examiner's cost of service. This claimed increase is due primarily to the use by Jupiter of allocations of costs to functions, different from those used by the staff and the Examiner.

While we are not here passing upon the validity of the Examiner's cost of service we note that Jupiter's proposed 1.0¢ settlement rate produces annual revenues of $159,216 in excess of the Examiner's cost of service. However, a consideration of the benefits which a settlement can effectuate militates against our outright rejection of the proposed settlement rate on this ground alone.

The proposed settlement would accomplish the following: A reduction in Jupiter's transportation rate of approximately 65 percent which would effect an immediate reduction in Tennessee's purchased gas costs of over $1,000,000 annually without further litigation; establishment of a firm transportation rate of 1.0¢ per Mcf; immediate settlement of the Louisiana severance tax issue; termination of all pending rate and certificate proceedings and court appeals involving Jupiter; realization of the maximum benefits to consumers through establishment of the lowest transportation rate, at which Jupiter claims its stockholders will be protected from severe financial loss and under which Jupiter can be preserved as an operating entity.

Having weighed these factors together with our consideration of the relationship of the revenues at the proposed settlement rate to the Examiner's cost of service, referred to above, we are of the opinion that, taken in its entirety, Jupiter's amended offer of settlement is in the public interest and should be approved. Our approval, however, does not constitute, nor should it be considered, an acceptance of or agreement with Jupiter's adjustments to the Examiner's cost of service or the allocation methods employed by Jupiter or any of the other factors which form the basis for Jupiter's adjustments.

Our approval of Jupiter's offer is without prejudice to any future investigation or consideration by the Commission of any or all of Jupiter's jurisdictional rates and charges. Thus we do not include as part of the settlement we are approving here, Jupiter's reservation that its proposed 19.5¢ per Mcf contractual price to Tennessee shall be subject to change only in the event and to the extent that the Commission validly authorizes a price for gas sold by Phillips-Kerr McGee to Jupiter at a level different from 18.5 cents per Mcf.

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[7] Since the filing of the amended offer, the Court denied Jupiter's petition to review the Commission's order denying Jupiter's petition to intervene in the South Louisiana area rate proceeding, Docket No. AR61–2, 362 F. 2d 92 (CA7–1966). Jupiter's other appeal is from the Commission's amendment of its temporary certificate in Opinion No. 470, 34 FPC 486.

Our approval of Jupiter's settlement offer will terminate the proceeding in Docket No. RI63-212. We will affirm the Examiner's denial of Tennessee's certificate application in Docket No. CP65-58. Tennessee has indicated that it does not oppose the settlement offer. The annual lease fee proposed in the latter docket is almost 2½ times Tennessee's purchase gas costs at the settlement rate.

In Opinion No. 470, we amended Jupiter's temporary certificate in Docket No. G-16679. We shall in this order issue a permanent certificate to Jupiter in that docket with a condition requiring Jupiter to establish an escrow account as proposed in its amended offer. In addition, any amounts Jupiter receives from Phillips-Kerr-McGee, by way of refund as a result of the reduction in Phillips-Kerr McGee's in-line price in the Rollover Field, as ordered in Opinion No. 470, in Docket Nos. G-16611 and G-16718, shall be included in the escrow account.[8] The amounts placed in escrow shall be subject to further orders in Docket No. G-16679 directing disposition to the party or parties entitled thereto.

Jupiter's reservation of claimed rights with respect to the collection from Union and Phillips-Kerr McGee of compensation for transporting, separating or storing those producers' condensates and liquefiable hydrocarbons and the producers answers on that point does not present any issue to be determined at this time. Any contractual arrangements Jupiter makes with the producers for those services will be acted upon if and when they are appropriately submitted to this Commission.

The Commission finds:

(1) The settlement of the proceedings in Docket Nos. RI63-212, CP65-58, and G-16679 on the basis set forth in Jupiter's amended offer of settlement filed May 25, 1966, as above described, is reasonable and proper in the public interest in carrying out the provisions of the Natural Gas Act, and such proposed settlement should be approved and made effective, subject to the terms and conditions hereinafter provided and ordered.

(2) The proposed settlement rate of 1.0¢ per Mcf should become effective May 15, 1966, and Jupiter should make appropriate filings with the Commission to reflect the reduced rate effective as of that date, subject to the approval of the Commission.

(3) It is reasonable and proper and in the public interest that a permanent certificate of public convenience and necessity be issued to Jupiter in Docket No. G-16679, subject to the conditions as hereinafter ordered.

(4) In view of this settlement, it is necessary and appropriate in the public interest and in carrying out the provisions of the Natural Gas Act that the proceedings in Docket No. RI63-212 and Docket No. G-16679 be terminated and that the Examiner's decision in Docket No. CP65-58 be affirmed.

The Commission orders:

(A) The settlement of these proceedings on the basis of the terms contained in the settlement offer as above-described is approved and Jupiter shall make the necessary filings to reflect the reduced transportation rate of 1.0¢ per Mcf, to be effective May 15, 1966, subject to the terms and conditions as hereinafter ordered.

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[8] We note that Jupiter, in its initial brief in Docket No. G-13221, *et al.*, filed September 30, 1964, agreed to flow-through or to refund to Tennessee any rate reductions or refunds it receives from Phillips-Kerr McGee resulting from Jupiter's operations in the Rollover Field.

(B) A permanent certificate of public convenience and necessity is issued to Jupiter in Docket No. G–16679, subject to Jupiter's placing in an escrow account, an amount equal to 2/3 of the Louisiana severance tax reimbursement collected from Tennessee between December 1, 1958, and July 31, 1965, together with interest at 7 percent from the date of collection until the date of the Commission's order herein; and an amount equal to the refunds which Jupiter receives from Phillips-Kerr-McGee, as a result of the Commission's establishment in Opinion No. 470 of an in-line price for Phillips-Kerr-McGee.

(C) Jupiter shall establish an escrow account relating to the Louisiana severance tax by immediately depositing an amount of $252,298 and monthly deposits of $27,000 for a period of fifty months. Jupiter shall also deposit in such escrow account all amounts received or to be received as a result of our Opinion No. 470.

(D) The amounts deposited in the escrow account, together with accumulated interest thereon shall be retained subject to further order in Docket No. G–16679 directing disposition to the party or parties entitled thereto.

(E) Within 15 days of the date of this order Jupiter shall file appropriate revisions to its FPC Gas Rate Schedules, reflecting the rate reductions herein approved and ordered, subject to the Commission's acceptance thereof.

(F) Upon compliance by Jupiter with the terms of this order, and subject to the disposition of the amounts referred to in paragraphs (C) and (D) above, the proceedings in Docket Nos. RI63–212, G–16679 and CP65–58 will be terminated.

(G) This order is without prejudice to any future investigation or consideration of Jupiter's rates and charges, which the Commission may hereinafter order.

(H) This order is without prejudice to any findings or orders which have been or may hereinafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Jupiter, the Commission Staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Jupiter or any other persons or parties affected by this order.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON A RATE INVESTIGATION OF THE JUPITER CORPORATION AND ON A RELATED CERTIFICATE APPLICATION OF ITS PIPELINE BUYER

(Issued January 5, 1966)

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I

NATURE OF THE CASE

Ellis, *Presiding Examiner:*

Combining a certificate application and a rate investigation, this proceeding is—(a) an inquiry under Section 5 of the Natural Gas Act into the rates charged by The Jupiter Corporation for the service of transporting gas to the Louisiana shore from points 9 miles in the Gulf, (b) a like inquiry into Jupiter's sales rate for other gas it purchases at sea and resells on shore, and (c) an application of the pipeline buyer for the certification of its proposal to lease Jupiter's pipelines at a flat, monthly rental, and operate them thereafter for its own account.

The questions and objections raised include—(1) whether Jupiter's carriage of gas ashore for the account of the producer is a gathering function exempted by law from regulation; (2) whether its purchase-transportation-resale operation is in essence a gathering function likewise exempted; (3) if Jupiter is found to be subject to regulation, whether its revenues and return must be appraised on the basis of its total gas and oil business, including production activities in other areas; (4) the disposition of state severance tax reimbursement funds collected to date from the pipeline buyer but not remitted to the producer or to the state taxing authority; and (5) as to the certificate application (contemplating an assignment of the transportation activity to the pipeline buyer), whether the proposed rental price for the line is excessive.

II

PROCEDURAL RECORD

This proceeding developed according to the following schedule:

December 5, 1962: Commission order in RI63–212 instituting investigation of the gas transportation rates charged by Jupiter, 28 FPC 942.

December 17, 1962: Notice of intervention of Public Service Commission of the State of New York.

April 17, 1963: FPC order permitting intervention of: Public Service Electric & Gas Co.; The Brooklyn Union Gas Co.; and Long Island Lighting Co.

August 28, 1964: Tennessee Gas Transmission Company's application for a certificate of public convenience and necessity (CP65–58).

October 30, 1964: FPC order consolidating proceedings, providing for hearing, fixing date of prehearing conference and prescribing procedure.

November 12, 1964: Motion of Tennessee Gas for extension of time in which to submit prepared testimony and exhibits.

November 20, 1964: FPC's notice of extension of time in re Tennessee Gas Transmission Co.'s motion of November 12.

November 23, 1964: Notice of intervention of Pennsylvania Public Utility Commission.

December 2, 1964: FPC order permitting intervention of: Long Island Lighting Company; Public Service Electric and Gas Company; and Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc., jointly.

December 8, 1964: Staff testimony and exhibits received.

December 8, 1964: Tennessee Gas testimony and exhibits received, also first supplement to its application.

December 16, 1964: Jupiter's motion for extension of filing dates.

December 16, 1964: Jupiter's motion to terminate, proposing a basis of settlement.

December 22, 1964: Jupiter's statement correcting motion to terminate.

December 24, 1964: Answer of Long Island Lighting Company in opposition to motions to terminate and to extend filing dates.

December 28, 1964: Answer and objection of Staff Counsel to motion to terminate proceeding.

December 29, 1964: FPC's notice of further extension of time.

January 8, 1965: Jupiter's petition for declaratory order and motion to dismiss proceedings in Docket No. RI63–212;

Motion for continuance;

Motion for oral argument;

Jupiter's alternative motion to sever and to stay.

January 11, 1965: Jupiter's addendum to petition for declaratory order.

January 18, 1965: FPC's notice of further extension of time.

January 18, 1965: FPC order denying petition to terminate proceedings, 33 FPC 82.

January 18, 1965: Joint answer by Phillips Petroleum Co. and Kerr-McGee to alternative motion to sever and to stay and to petition for declaratory order and motion to dismiss proceedings in RI63–212.

January 18, 1965: Answer of Long Island Lighting Co. to motions of The Jupiter Corporation.

January 26, 1965: Motion for continuance by Jupiter.

January 26, 1965: Petition by Jupiter for rehearing of order of January 18.

February 2, 1965: Answer and objection of Commission Staff to petition for declaratory order and alternative motion to sever and stay proceedings.

February 3, 1965: FPC order granting in part Jupiter's motion of January 26, for continuance.

February 8, 1965: Motion for continuance by Jupiter.

February 12, 1965: FPC order denying motion of February 8, 33 FPC 204.

February 12, 1965: Complaint for declaratory order or injunction filed by Jupiter against FPC in the United States Court for the Northern District of Illinois.

February 15, 1965: FPC order denying motion of January 26, for rehearing, 33 FPC 213.

February 18, 1965: FPC order deferring action on petition for declaratory order and motion to dismiss proceedings (1/8/65) in Docket No. RI63–212, and denying alternative motion to sever and stay proceedings, and motion for oral argument. Also extending filing dates, provided Jupiter wires by the next day that they will file their testimony within the 30-day period, 33 FPC 295.

February 19, 1965: Jupiter's telegram stating they will appear in the U. S. District Court on February 23.

February 23, 1965: District Judge Will dismissed Jupiter's complaint for injunction and order.

February 26, 1965: FPC order further extending time for filing and serving of evidence and for prehearing conference.

February 26, 1965: Combined motions and petitions for rehearing filed by Jupiter.

March 1, 1965: Testimony and evidence of interveners Kerr-McGee Oil Industries, Inc., and Phillips Petroleum Company received.

March 2, 1965: Telegram from Jupiter urging the Commission to rule upon petitions for rehearing.

March 10, 1965: Jupiter's motion to dismiss proceeding in Docket No. RI63-212, or else to consolidate with Southern Louisiana area rate case.

March 10, 1965: Jupiter's motion for continuance.

March 12, 1965: FPC order denying petition for reconsideration and motions for continuance, also rejecting rehearing for denial of declaratory order, 33 FPC 534.

March 23, 1965: Answer of Commission Staff to Jupiter's motion to dismiss.

March 24, 1965: Reargument before U.S. Court for Northern District of Illinois.

March 25, 1965: Testimony and evidence of Jupiter received, in part.

April 9, 1965: Jupiter filed final testimony and exhibits.

April 13, 1965: Prehearing conference before Examiner.

April 23, 1965: Complaint for injunction filed by Jupiter against FPC in the U.S. Court for the Southern Division of Texas.

April 29, 1965: FPC order denying motion to dismiss proceedings (Jupiter's motion of 3/10/65), 33 FPC 901.

May 3, 1965: Injunction complaint denied by U.S. Court for Southern Division of Texas.

May 3, 1965: Jupiter's motion to the Examiner to dismiss proceedings and terminate investigation, and to recess proceedings pending the certification of the motion to the Commission for decision.

May 11, 1965: Seven days of hearing concluded.

May 18, 1965: Exhibit J-19 received.

June 1, 1965: Exhibit J-18 received.

June 15, 1965: Joint brief of distributor interveners filed, and endorsed by New York Public Service Commission.

June 16, 1965: Initial brief of Commission Staff received.

June 17, 1965: Initial briefs of Phillips and Kerr-McGee received.

July 15, 1965: Initial briefs of Jupiter and Tennessee Gas received.

August 5, 1965: Motion of Phillips and Kerr-McGee for leave to file reply to initial brief of Jupiter.

August 5, 1965: Reply brief of Commission Staff received.

August 11, 1965: In another docket not here consolidated the sale by Phillips and Kerr-McGee to Jupiter was certificated effective July 23, 1964, the initial price not to exceed 18.5 cents and the temporary certificate for Jupiter's sale to Tennessee, issued in 1962, was amended to limit the price to 20.9 cents per Mcf effective July 23, 1964. Opinion No. 470, G-16611, G-16679, *et al.*, 34 FPC 486.

August 13, 1965: Presiding Examiner's ruling denying Phillips and Kerr-McGee's motion of August 5, 1965.

III

JUPITER'S TRANSPORTATION OF GAS FOR PURE'S ACCOUNT

1. *Jupiter's dual program:* The Jupiter Corporation owns two parallel pipelines which bring gas ashore, from platforms ten miles out in the Gulf to a point on the Louisiana shore connecting with the lines of the Tennessee Gas Transmission Company. The mechanics of the operation are explained in Chapter V below, but it is first necessary to distinguish the separate and disparate programs under which Jupiter takes gas from two producers, commingles much of it, and accomplishes the delivery from sea to shore. First—both in time and quantity—Jupiter acts as transporter for the account of one of the producers, The Pure Oil Company, which sells and delivers to Tennessee.

Jupiter's contract is with the producer (Pure), not with Tennessee, and Jupiter's function is to transport the product of the wells and collect a fee, averaging 3.4 cents per Mcf for so doing. Also, in its plant ashore, Jupiter separates out the liquid oil droplets, called condensate, for Pure. In its other program, but in part through the same facilities, Jupiter purchases gas at the platform of the other producer (Kerr-McGee Oil Industries and Phillips Petroleum Company acting jointly), brings it to shore and there separates and re-sells it to Tennessee.

So what is in issue in this "Section 5" rate investigation is two separate rates—the transportation charge in the case of the gas from Pure and the resale price in the case of the gas from Kerr-McGee and Phillips ("K–M–P"). The essence of the controversy is in these three figures: Jupiter charges Pure 3.4 cents per Mcf transported, and Jupiter's margin on the resale of the K–M–P gas is 2.4 cents, meaning the resale price to Tennessee minus Jupiter's purchase price from K–M–P. These are averages obtained from the 1962 volumes, and for that year the Commission Staff has computed a cost of service at just .518 cents per Mcf. The recommended reduction of rates—from 3.4 cents and 2.4 cents to .518 cents—would mean a reduction in net revenues per year from $1,940,000 to only $270,000, effective, of course, prospectively only. The annual difference, $1,670,000, the staff calls excess revenues; its loss Jupiter says would be drastic, indeed disastrous.

Jupiter defends on all fronts, jurisdictional, legal, accounting and otherwise, and, pointing to its losses in gas and oil exploration in other areas, responds that its over-all net revenue is reasonable and quite unexceptionable. Finally—but not said to be in confession and avoidance—Jupiter has arranged to lease their lines and plant in entirety to Tennessee for $1,200,000 per year, and Tennessee's application for a certificate to license that operation is part of this case under Docket No. CP65–58.

2. *Pioneering history of Jupiter's service:* Neither the jurisdictional nature of Jupiter's service, nor the fair rate for it, can be adjudged without an appreciation of its pioneering history, back to 1950. Jupiter is the corporate successor to Commonwealth Oil Corporation, and Commonwealth was the nominal successor to Marine Gathering Company, a small organization developed specifically as the first transporter of Gulf of Mexico gas to the mainland shore. As the Commission explained in its order on Pure's recent rate settlement (where Pure, in the special case of this sale, was allowed a rate said to exceed the area guide-line ceiling,)[1]

> * * * Pure states that it was among the first to explore for oil and gas on the Continental Shelf, offshore Louisiana. In 1949, after two wells had been drilled and abandoned on the Rollover leases, Pure brought in the discovery well. The well was ten miles offshore in forty feet of water. Pure instituted negotiations with every major transmission company in Southern Louisiana but was unable to interest any in initiating offshore operations. Pure states that at the time it was advised that the feasibility of an underwater pipeline for the necessary distance was very doubtful. After having exhausted all efforts to secure an interstate pipeline purchaser, Pure says it was approached in September, 1949, by Marine Gathering Company,[4] (Marine) then a paper corporation, which offered to purchase and transport the gas. Negotiations continued until March, 1950, when Pure executed a contract with Marine to sell it the Rollover
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> [4] The name of Marine Gathering Company was changed to Commonwealth Oil Corporation, and recently Jupiter Oil Corporation succeeded to the interests of Commonwealth.

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[1] Order dated November 27, 1962, Docket No. G–16790, 28 FPC 889, 891.

gas at an initial price of 4.5¢ per Mcf (15.025 psia) in the field. Subsequently, Tennessee extended its transmission system to a point onshore of the Rollover Field and Marine laid the underwater line to connect with Tennessee's system.

For Jupiter, testimony on the risks and ventures in this new operation came from its Vice-President, G. B. Liese, who had been president of the predecessor companies, Marine and Commonwealth. At 1T96 he said:

> In 1949 it was well known in the oil and gas community that Pure had brought in several lush gas wells from its platform in the Rollover Field about 9 miles from the Louisiana coastline. There was considerable speculation at the time about the amount of reserves which could be tapped in the general area, but most indications were that the reserves were substantial. Speculation of this character was reinforced by Pure's continuing to drill wells from its Rollover platform to determine the limits of the field even though there appeared to be no market for the gas in the foreseeable future. In any event, the existence of this shut-in gas for which there was no market was common knowledge in the trade. It was equally well established that otherwise commercial quantities of gas were worthless unless the gas could be gathered for delivery to a market. Pure was faced with just such a problem with the Rollover Field. At that time there was no such thing as an offshore gas gathering line. While the industry had some experience in laying pipelines across rivers and in shallow lakes and coastal waters, it had no experience whatsoever with unprotected, open Gulf. A line to gather gas from the Pure platform would have to be laid in water up to 50 feet deep. No one knew how best to protect the pipe from corrosion and barnacles or from boat anchors, or just what techniques or equipment would be necessary in laying and burying the pipe. In addition, it was clear that the constant wave and tidal action, strong currents, and seasonal squalls, storms, and hurricanes common to this area of the Gulf, would pose serious threats not only to a successful installation of the line but also to its maintenance and operation. In brief, then, Pure had a problem in 1949–1950 to which the industry at the time had no ready answer. The gravity of the risks involved in solving this problem is best evidenced by the fact that the well-established producing and transportation companies, with great capital and engineering resources, were unwilling at the time to attempt construction of the required gathering facilities.

Numerous trade journals are quoted: Oil and Gas Journal refers to Marine (now Jupiter) as "the world's first ocean-going gas pipeline." New methodologies were required, all obviously experimental and uncertain, both for laying the lines six feet below the ocean bottom and for permanent protection from marine organisms, tides, storms, ship anchors and other hazards to avoid which the industry had as yet no charted guides.

The operation succeeded, and deliveries began under the first arrangement contracted in 1950, when Pure sold to Marine (Jupiter) and Marine resold to Tennessee. In 1958 the resale arrangement was dropped and Pure began its direct sale to Tennessee, with Marine-Commonwealth-Jupiter acting as transporter, and Tennessee assuming the gas purchase contract with Pure.[3] Jupiter's fee was then fixed at 4 cents/Mcf for the first 62,500 Mcf per day and 3 cents for any in excess. Current (1962) average is 3.4 cents. The transportation proposal was certificated on July 25, 1958, in Docket No. G-2692, G-12583, and the contract, Jupiter's Rate Schedule No. 7, became a subject of this investigation by the Commission's order of December 5, 1962, Docket No. RI63-212, which began this case, 28 FPC 942.

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[3] For the discussion of the "gathering" exemption in Chapter V, below, it is of interest that Pure's 1957 agreement with Marine calls for the point of delivery from Pure to Marine (really the pickup point), as to any new field discoveries, to be "at a central point in each such field." (Page 19 of contract in docket G–12583.) It is only from and beyond that "central point" that Jupiter's function—now claimed to be "gathering"—actually begins.

In the meantime Pure's final rate to Tennessee for the gas now sold by Pure direct to Tennessee, but transported to shore by Jupiter for the account of Pure, underwent considerable change, as shown in the following progression:

1950: Pure sold to Marine at 4.5 cents and Marine, after shore delivery, resold to Tennessee at 9.2263 cents.

1957: Marine's resale contract with Tennessee was assigned to Pure and Pure began its direct sale to Tennessee.

1957: Pure's new direct contract with Marine-Commonwealth-Jupiter became effective, with Pure agreeing to pay, at its own expense, a "gathering" or delivery charge which averages 3.4 cents.

1958: Pure filed an increase in its total, delivered-on-shore rate to Tennessee at 21.3333 cents, which was suspended by FPC's notice dated October 29, 1958, (G-16790), and became effective subject to refund. Thus Pure's net, after the rate increase, became 21.3333 cents minus 3.4 cents, or 17.9333. Marine's revenue at 3.4 cents was to remain steady, unaffected by Pure's sale price.

1962: Pure's tentative increase in sales rate to 21.3333 cents became the subject of a rate settlement proceeding reported in 28 FPC 889, from which the quotation on, *supra*, pp. 1099 and 1100 above is taken. Pure proposed a two-element rate, viz.: (a) 16.75 cents/Mcf plus (b) whatever transportation fee Pure is charged by Jupiter, or 3.4 cents. The rate settlement order, approving the combined and agreed-to rate of 16.75 cents plus transportation costs incurred, contains the following footnoted stipulation and understanding, taken from 28 FPC 889 at 895:

> Jupiter Oil Corporation charges Pure for transportation from the field (10 miles offshore) to Tennessee Gas Transmission Company main line on shore. The charges are 4.0 cents per Mcf (16.7 psia.) for the first 62.5 MMCFD and 3.0 cents per Mcf (16.7 psia.) for the remainder. These charges to be recouped from Tennessee as part of the rate will be only those actually paid by Pure to Jupiter, its successors or assigns. Any reduction in charges by Jupiter will thus reduce payments by Tennessee to Pure.

Thus, since the rate increase settlement, Tennessee has paid Pure 16.75 cents plus an average of 3.4 cents, or 20.15 cents, and Pure has been paying Jupiter the 3.4-cent transportation charge and retaining the balance. Hereafter, when Jupiter's rate changes on the effective date of the order below, Tennessee's cost will be affected accordingly, see Chapter IX below.

IV

JUPITER'S RESALE OF KERR-MCGEE-PHILLIPS GAS

The other rate of Jupiter under investigation in this "Section 5" case is that for its resale to Tennessee of gas Jupiter buys at the platform in the Gulf from K-M-P. It is the rate margin between its cost and selling prices that is under inquiry. The background is this:

Kerr-McGee and Phillips Petroleum Company jointly own and operate a number of gas wells 10 miles off the Louisiana shore. Through several interconnected underwater flow lines, they gather the gas at a marine platform about a mile from Pure's. At this point the two producers sell it to Jupiter, which brings it to shore, commingled with some of Pure's gas. At Jupiter's separation plant 29 miles inland, Jupiter delivers and sells it to Tennessee.[8] The arrangement began in 1953, not long after the Pure transportation service had begun, but the contract procedure has been quite different.

Except for a brief, interim sale to Tennessee by Marine (later Jupiter), for some years the resale actually was to a Canadian concern, Niagara Gas Transmission, Limited, but physical delivery by Jupiter was made on shore to Tennessee for transportation by Tennessee to the Canadian border for the account of Niagara. For that reason, the sale and resale were then treated by FPC as nonjurisdictional, and the various parties' applications for certificates and rate filings were returned without action. See Opinion No. 470 of August 11, 1965 in Phillips, G–16611, *supra*.

By 1958, Niagara had arranged for gas elsewhere and accordingly assigned the gas purchase contract to Tennessee, effective November 5. In the meantime, the various prices had escalated, and the resale price now payable by Tennessee became 21.3333 cents (plus a tax reimbursement item which is treated below in Chapter X). The certificate application for the sale to Tennessee became involved in a number of proceedings, none of which became final until the Commission's Opinion of August 11, 1965, No. 470, just cited, which (a) issued a final certificate to Phillips and Kerr-McGee for their sale to Jupiter at an initial price limited to 18.5 cents effective July 23, 1964, (formerly 21.3333 cents minus 2.4 average, or 18.9333 cents), and (b) withheld decision on a final certificate for Jupiter's resale to Tennessee, but amended the temporary certificate for that sale (order of May 24, 1962 in G–16679) to limit the resale price to 20.9 cents as of July 23, 1964 (instead of 21.3333 plus tax reimbursement). Since that decision is in a docket not here consolidated, and came after this record closed, it is not disclosed what price adjustments have been made in fact as a result of it.

Technically, what is before the forum is the reasonableness of Jupiter's price to Tennessee, *i.e.*, 21.3333 cents plus tax but now presumably 20.9 cents gross, since that is the source of Jupiter's revenues. It is the jurisdictional sale whose price is for rate control here and as such is the subject matter of Jupiter's Rate Schedule No. 8 here under investigation. Actually, however, what is really in issue is the reasonableness of the margin, now 2.4 cents, between that sale price and the price Jupiter pays to the two producers. At the hearing, the complication developed that the Commission's case is said to be wrongly addressed because, under the purchase contracts with the producers, Jupiter's purchase price moves up or down according to any change in their sale rate to Tennessee. Hence the order, it is said, will not affect Jupiter's net margin. This detail is treated in Chapter VIII below.

Physically the gas is treated alike and travels the same route as Pure's gas, see Chapter V below, which gives rise to the involved claim, really a metamorphosis, to the effect that Jupiter's is functionally only a transportation service to deliver the gas sold by the producers to the pipeline, the same as their arrangement with Pure, and should be equally free of regulation on the claim it is "gathering" exempted by the law. Jupiter wants to be known as agent for the sellers, not as an independent buyer and re-seller, a description which belies quite a number of verified rate and certificate application filings by Jupiter since 1954. All of these have been consistent in describing the resale for what it is. This new-found agency status comes also with some surprise to their alleged principals—K–M–P, who supposed all this time they were selling to Jupiter,[4] and who admit no responsibility for the gas after they deliver it to Jupiter at sea. Neither does it appear to be Tennessee's conception of the transaction (Brief, page 2).

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[8] Eight and a half miles further inland a processing plant of the Phillips Company athwart Tennessee's line came into operation in July, 1962 and began to remove some of the hydrocarbons from the gas stream. The avails of this operation (as to the K–M–P gas) are split, with 30 percent going to Jupiter, amounting to $82,200 for an entire year, based on the figures for the rest of 1962. Exhibit S–2, Schedule 2, line 11.

This recasting of a dozen or more formal documents, to make a sale not a sale but something else, might be called for in other connections if the paper appearances were seen to be illusory *and* if they were so drafted for the very purpose of escaping Federal regulation of interstate commerce.[5] Here, rather than closing a loophole, the reformation is sought for the purpose of making one. As such it has the benefit neither of reason nor of precedent.

Anyway, as developed in Chapter V, the physical service by Jupiter is not exempt gathering but jurisdictional transportation, and the charge for it is equally subject to the law's enjoinder that it must be just and reasonable to be lawful, hence the claim is moot and irrelevant.

V

IS THE TRANSPORTATION EXEMPT FROM THE LAW AS "GATHERING"?

Jupiter makes many arguments, but none more seriously than the claim that all of its service, from beginning to end, is legally, practically, and economically a gathering service which puts it quite outside the purview of the Commission's jurisdiction. If so, this would call for dismissal of the entire case and the cancellation of its permanent certificate to transport gas for Pure. As to the resale function in the case of the K–M–P gas, if there be acceptance of Jupiter's view, rejected in Chapter IV above, that the two sales contracts should be reformed and read to comprise merely a transportation arrangement for the producers, then it would also call for cancellation of its temporary certificate to sell K–M–P gas to Tennessee, and the withdrawal of its rate schedule filings. The point made requires detailed analysis because any jurisdiction question is fundamental; also no two "gathering" cases seem to be quite alike, and the several precedents have such terminology as "central point" and "main line", which may or may not have the same meaning here.

The legal question must be noted before the facts can be appreciated. The operative portions of the Natural Gas Act, Sections 4 and 7, cover only two activities, sales and transportation of gas in interstate commerce. For the coverage of those key words the referent is Section 1(b) which delineates the two subjects as sales in interstate commerce of natural gas for resale and transportation of gas in interstate commerce (which might or might not include the transportation aspect of the gathering process); but the same sentence exempts the activity of production and the activity of gathering.[8] The remaining specific requirements of Section 1(b) are not involved since all of the gas is headed toward Tennessee's great interstate system and, as such, it is obviously "for resale" and "in interstate commerce." *Shell Oil Co.* v. *F.P.C.*, 247 F. 2d 900 (CA5–1957), cert. denied 355 U.S. 930.

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[4] From K–M–P's Brief at page 6:

> This is a purchase and sale as much as any of the contracts of the producers in the offshore Louisiana area are purchases and sales. All the rights of ownership to the gas are transferred to Jupiter at Phillips' offshore platform * * *. Jupiter treats the transaction as a purchase and sale on its books (Tr. 424). Jupiter witnesses Davis (Tr. 592) and Liese (Tr. 732) characterized the transaction as a sale. Therefore, not only do the full rights of ownership pass to Jupiter at the offshore platform, but the parties intended the transaction to be a purchase and sale and treat it as such in their every-day operations.

[5] *Red Ball Motor Freight, Inc.* v. *Shannon*, 377 U.S. 311 (1964).

The facts of the operation: As an aid to the Commission's inquiry into the facts of their service, Jupiter favored the hearing with the testimony of their superintendent of gas gathering and processing operations, Mr. Davis, who supplied for the record the map of their system, which is reproduced herewith, both in full to show its entire length and with an enlarged detail of the seaward end. As a result, the record is clear and the facts, as outlined below, are believed to be undisputed. The contrasting claims to be considered are these: (a) the Staff's view that gathering ends at the platforms "A" 10 miles at sea, which is the point where Jupiter's service begins; (b) Jupiter's view that gathering extends 29 miles inland, beyond the end of their pipes, which stop at the shore, to the point of their separation plant's outlet. The impact of the two views is made plain by Jupiter's Exhibit 18, which is the source of the map printed herewith and shows the several segments of the total facility, as follows:

(a) *The establishment at sea:* Eight to ten miles out in the Gulf of Mexico from the shore of Louisiana there are two clusters of gas wells drilled by Pure and K–M–P, all apparently within a two-mile or so radius, about 17 wells in all. There are several satellite "platforms" or structures, and two main or central ones, one for each producer, located a mile apart. They, that is the central platforms "A", act as the two hubs of the system, and into each the individual well lines converge, not unlike the spokes of two wheels, or else the wells themselves feed directly to the platforms. Thus five wells come up directly to Pure's platform A and two well lines lead in from a little distance off.

The platforms are very substantial structures, with a quantity of equipment and evidently some personnel facilities. The platforms have separating equipment to divide out the liquid oil droplets (called condensate) from the gas as produced, also a glycol dehydrator and metering equipment.

Jupiter has two short lines in the area, an 8,111-foot line connecting a Pure sub-platform with its platform A, and the other of 5,005 feet connecting the latter with K–M–P's platform A.

(b) *The lines to shore:* Jupiter's line No. 1 is 8⅝ inches by 8.44 miles, bringing gas to the Louisiana shore from Pure's platform A. Parallel to it (400 feet apart at first and ending practically together) is Jupiter's line No. 2, which is 10¾ inches by 9.55 miles from K–M–P's platform A to the shore point.

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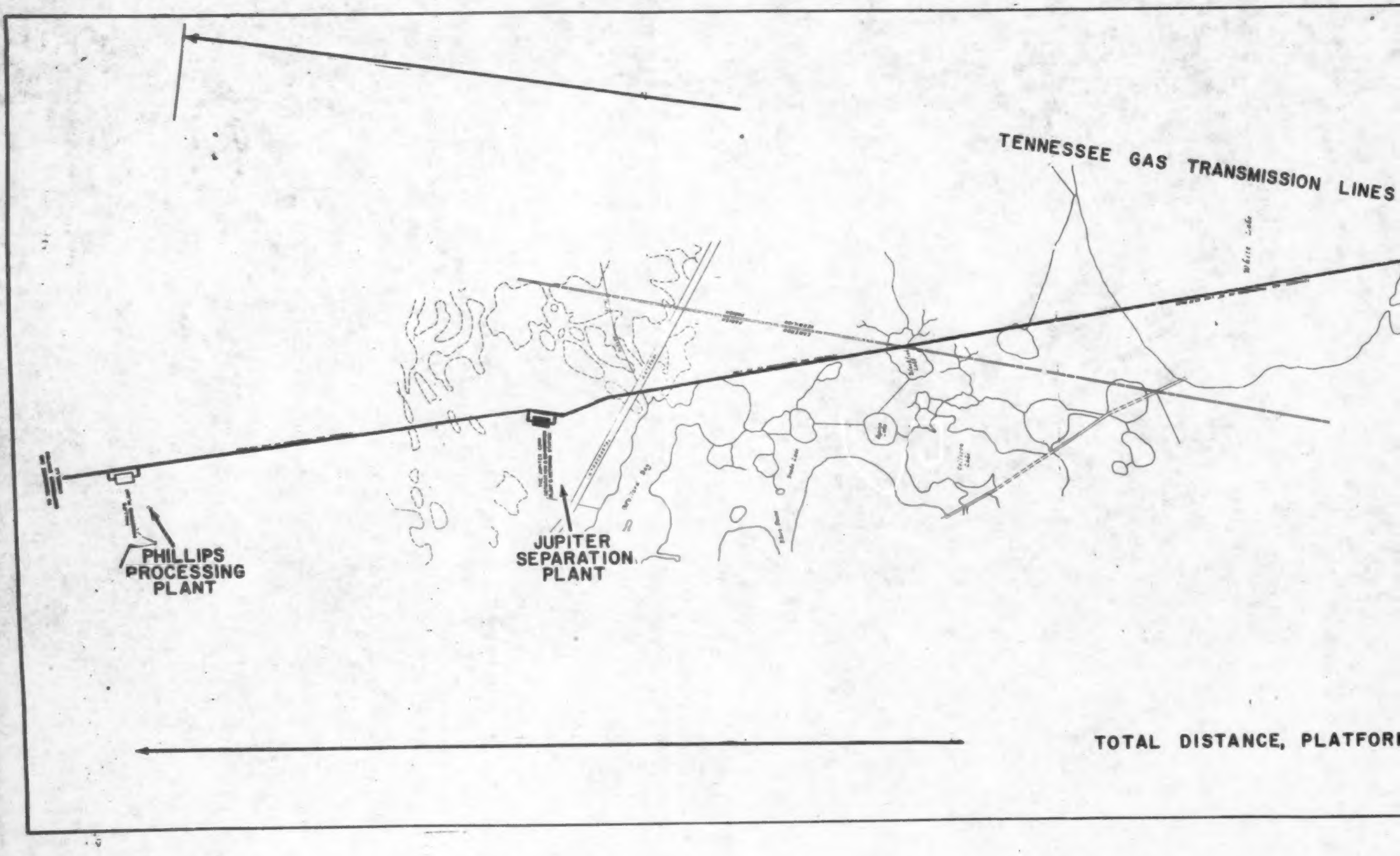
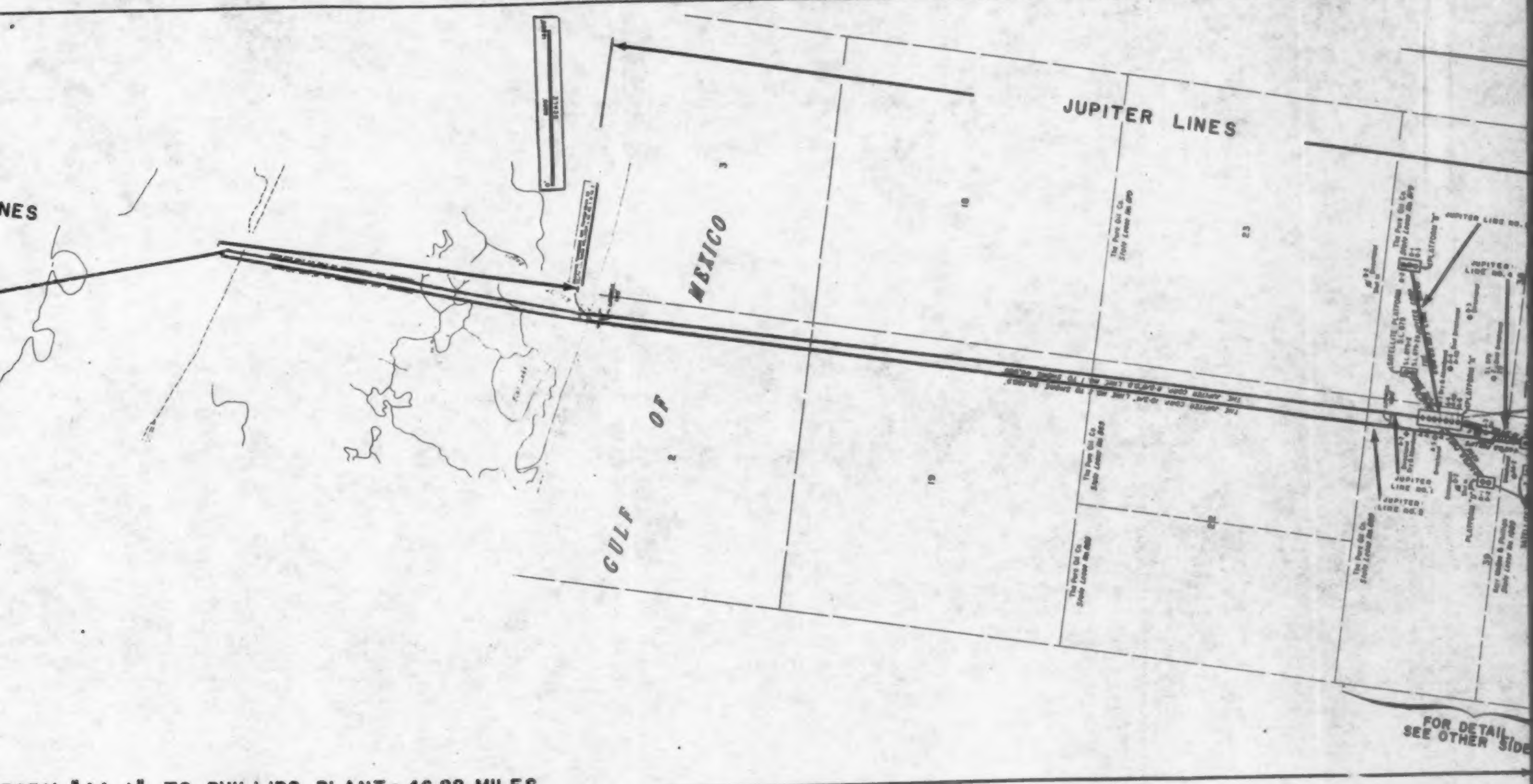
[8] Note the exemption does not mention facilities for gathering, which gives point to the cases that hold that the same facility may be jurisdictional for one purpose, such as transportation or sale, but exempt insofar as it is used for another purpose, such as gathering. *Saturn Oil & Gas Co.* v. *F.P.C.*, 250 F. 2d 61 (1957), cert. denied, 355 U.S. 956.

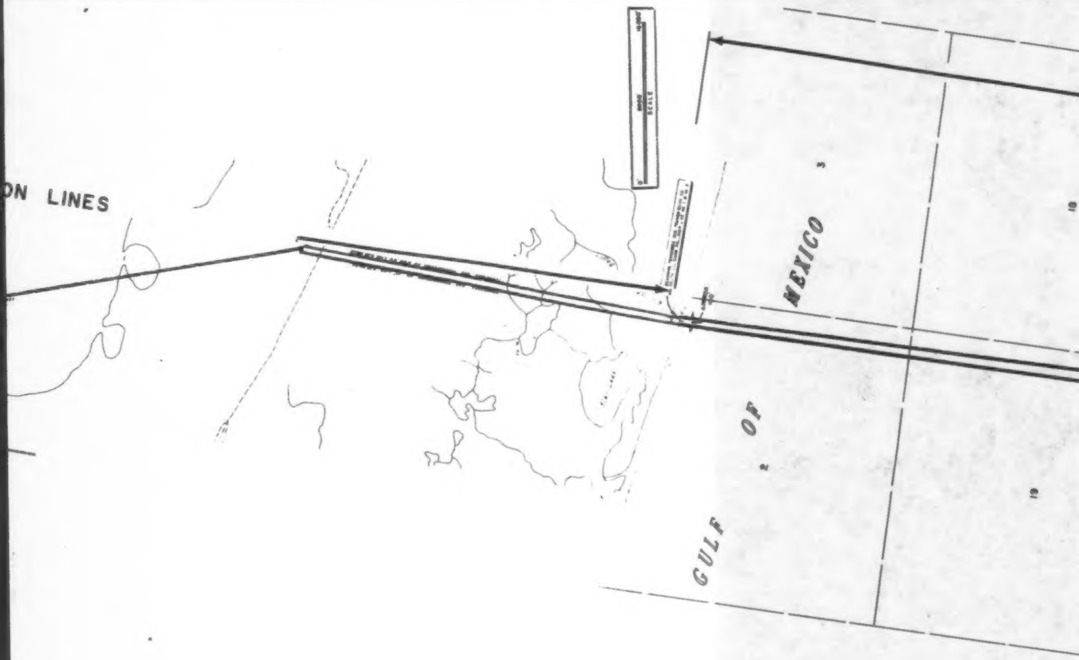

TENNESSEE GAS TRANSMISSION LINES
White Lake
PHILLIPS PROCESSING PLANT
JUPITER SEPARATION PLANT
TOTAL DISTANCE, PLATFOR



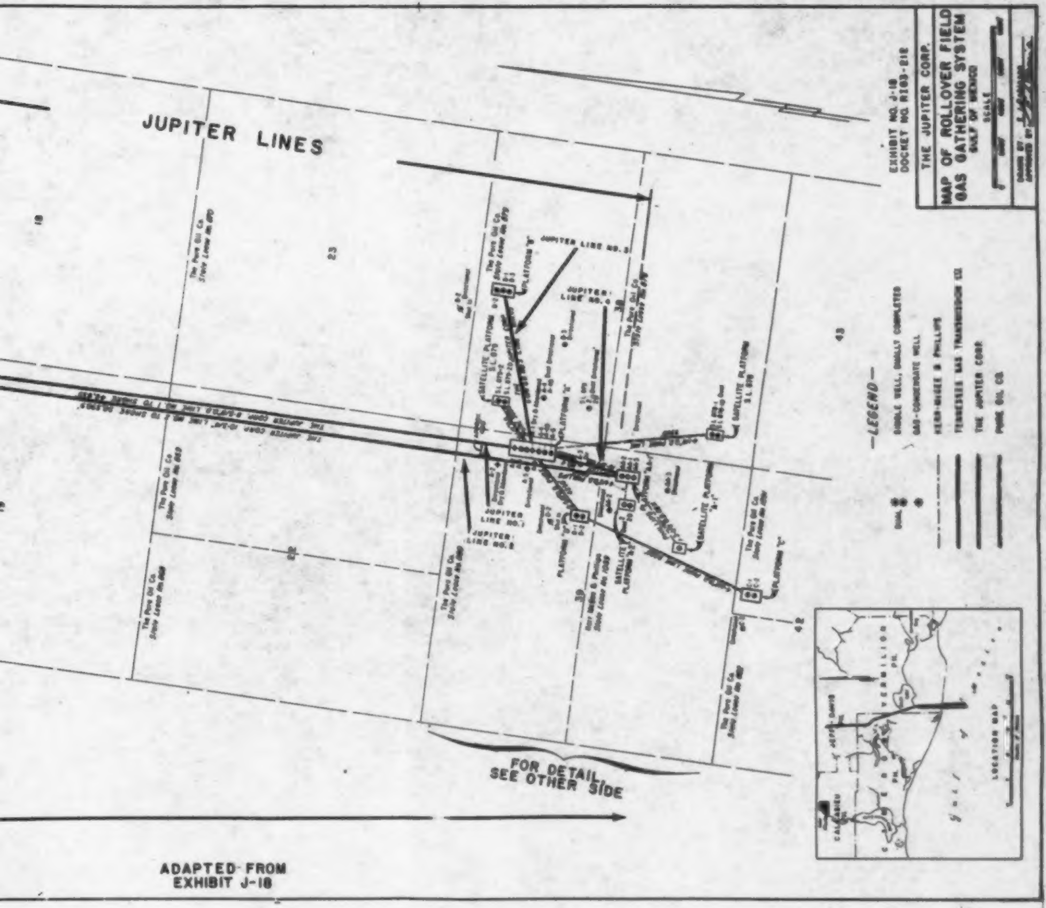
NES
JUPITER LINES
GULF OF MEXICO
3
18
23
19
2
The Pure Oil Co.
JUPITER LINE NO.
JUPITER LINE NO. 4
JUPITER LINE NO. 1
JUPITER LINE NO. 2
SATELLITE PLATFORM
PLATFORM "B"
PLATFORM "A"
FOR DETAIL SEE OTHER SIDE

FORM "AA-1" TO PHILLIPS PLANT = 46.88 MILES

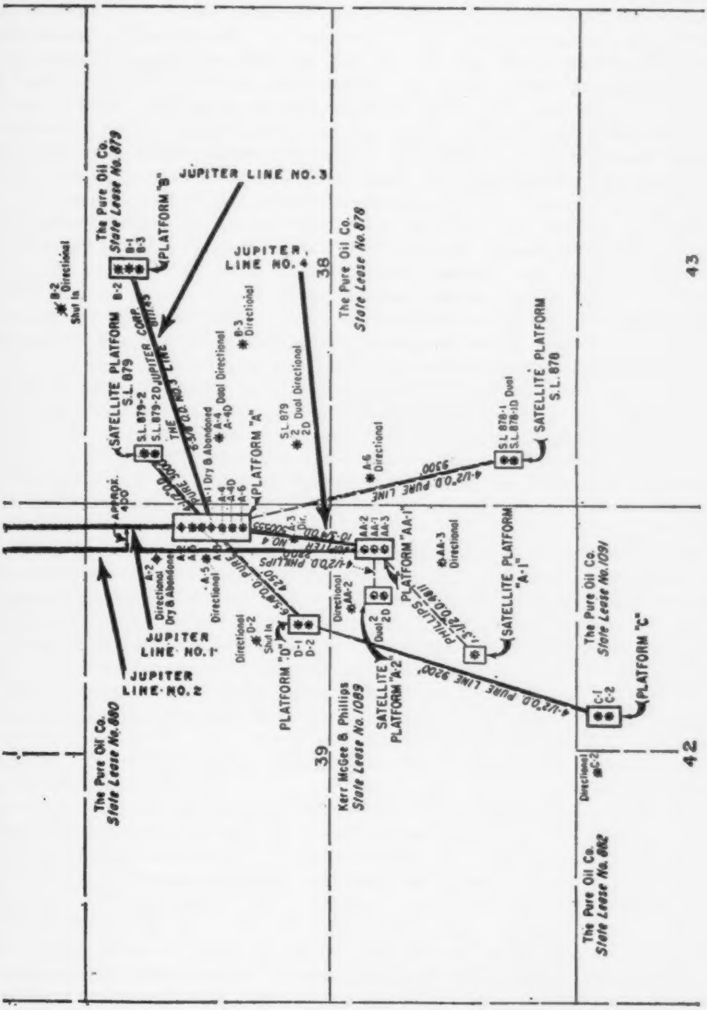
ADAPTED FROM
EXHIBIT J-18


ON LINES
GULF OF MEXICO

PLATFORM "AA-1" TO PHILLIPS PLANT = 46.88 MILES


JUPITER LINES
JUPITER LINE NO. 3
JUPITER LINE NO. 4
JUPITER LINE NO. 1
JUPITER LINE NO. 2
SATELLITE PLATFORM
FOR DETAIL, SEE OTHER SIDE
The Pure Oil Co. State Lease No.
Kerr-McGee & Phillips State Lease No.
23
22
39
42
43
LOCATION MAP
VERMILION
CALCASIEU
-LEGEND-
SINGLE WELL, DUALLY COMPLETED
GAS-CONDENSATE WELL
KERR-McGEE & PHILLIPS
TENNESSEE GAS TRANSMISSION CO.
THE JUPITER CORP.
PURE OIL CO.
EXHIBIT NO. J-18
DOCKET NO. RI63-218
THE JUPITER CORP.
MAP OF ROLLOVER FIELD
GAS GATHERING SYSTEM
GULF OF MEXICO
SCALE

ADAPTED FROM
EXHIBIT J-18


The Pure Oil Co.
State Lease No. 879
PLATFORM "B"
B-1
B-3
B-2
JUPITER LINE NO. 3
B-2 Directional Shut In
SATELLITE PLATFORM S.L. 879
S.L. 879-2
S.L. 879-2D
THE JUPITER CORP. 8-5/8 O.D. NO. 3 LINE
PURE
APPROX. 400'
A-1 Dry & Abandoned
A-4 A-4D Dual Directional
B-3 Directional
PLATFORM "A"
A-4
A-4D
A-6
S.L. 879 2 2D Dual Directional
JUPITER LINE NO. 4
38
The Pure Oil Co.
State Lease No. 878
A-6 Directional
4-1/2" O.D. PURE LINE 9300'
S.L. 878-1
S.L. 878-1D Dual
SATELLITE PLATFORM S.L. 878
43
A-3 Dir.
10-3/4" O.D. JUPITER NO. 4
4-1/2" O.D. PHILLIPS
AA-2
AA-1
AA-3
PLATFORM "AA-1"
AA-3 Directional
SATELLITE PLATFORM "A-1"
The Pure Oil Co.
State Lease No. 1091
A-2 Directional Dry & Abandoned
A-5 Directional
JUPITER LINE NO. 1
JUPITER LINE NO. 2
6-5/8" O.D. PURE 4250'
D-2 Directional Shut In
D-1
D-2
PLATFORM "D"
AA-2 Directional
2
2D
Dual
SATELLITE PLATFORM "A-2"
PHILLIPS 4-1/2" O.D.
4-1/2" O.D. PURE LINE 9200'
C-1
C-2
PLATFORM "C"
The Pure Oil Co.
State Lease No. 880
Kerr McGee & Phillips
State Lease No. 1089
39
42
C-2 Directional
The Pure Oil Co.
State Lease No. 882

DETAIL OF
OFFSHORE PLATFORM
AND WELL FACILITIES

FROM STRIP MAP
EXHIBIT J-18

(c) *The shore establishment:* About a thousand feet inland (in this bayou country the shore line is said to be highly indistinct), Jupiter's lines 1 and 2 join up through a common header with two lines owned by Tennessee but said to be operated in practical fact by Jupiter. Their lines are 16-inch and 8⅝-inch, and carry the gas for the next six and one-third miles, passing it into Tennessee's single 20-inch line which leads for 22 1/3 miles onward to Jupiter's separation plant, beyond which Tennessee has an 8½-mile line to Phillips' Lake Arthur processing or gasoline plant. At this point, Tennessee's supply lateral connects, leading to a compressor station and Tennessee's lines to New York and the Northeast. Note there is no compression upstream from that point, the entire operation apparently being under well pressure.

(d) *The facilities in operation:* Except for the use of Jupiter's minor line connecting a sub-platform of Pure with Pure's main platform A, all the gas is brought by the two producers from the wells up to the respective platforms A. Here they—the producers—operate facilities which dry the gas when needed and separate out the liquid condensate in order to permit the measurment of each, after which the producers re-combine the gas and condensate into a commingled gaseous mass and turn it over to Jupiter.

In the case of K–M–P, title passes to Jupiter at that point, and their gas (with condensate) passes ashore in Jupiter's line No. 2. In Pure's case, the re-combined mass comes into Jupiter's custody at Pure's platform A, most of it proceeding ashore in Jupiter's line No. 1, but some (the overflow) transferring over to K–M–P's platform A through Jupiter's line No. 4, and there it joins with Jupiter's purchased gas and passes on to shore in Jupiter's line No. 2.

From the end of Jupiter's lines on shore, the combined stream flows in the Tennessee-owned lines to Jupiter's plant, where Jupiter separates out the condensate a second time and stores it for the producers. At the same plant, 29 miles from shore, the gas may or may not go through Jupiter's dehydrators, depending on conditions. At the outlet of this plant, the gas is turned over by Jupiter to Tennessee after it is tested and measured, and title there passes. Later on, in the Phillips' processing plant added in 1962, a true processing operation occurs, meaning that some of the hydrocarbons (propane) are removed and sold as liquids.

Pure receives the producers' 30 percent share of the liquids from its gas, while Jupiter gets the same share (per its contract with the producers) from the K–M–P resale gas, amounting evidently to $82,200 in one year (Ex. S–2, Sch. 2, line 11). For reasons that are not developed or here understood, this revenue item of $82,200 is not deducted from the costs in the Staff's computation of a cost of service, with the result that Jupiter's cost-of-service revenues out of the entire operation will, in net effect, be supplemented by the additional revenues from the sale of the liquids out of the gas Jupiter buys from K–M–P. The amount of this increase in revenues which is not herein explained would appear to be the income item of $82,200 minus the associated expense items of $6,038 and $8,374 shown on Ex. S–2, Sch. 4, column 3. Neither Staff nor any intervener has proposed or recommended the reduction of Jupiter's cost of service by the amount of this related revenue item. This increment just about equals the return allowed in the cost of service.

Jupiter's claim: Referring to the specific claim with respect to the gathering exemption, Jupiter's position is that interstate jurisdictional transmission begins only at the outlet of Jupiter's plant, where Tennessee takes title, and that all physical activities upstream of that point are exempt either as production or as gathering and therefore quite outside the coverage of the law

(Brief, page 12). Of course, the sale by K-M-P to Jupiter (which Jupiter would have us regard as not a sale at all, see above) plainly is covered by the law in any event[7] and is not affected by the exemption once its contract status as a sale is accepted.

Jupiter's point, in support of the claim that gathering ends at their separator plant, results from their view that the word "gathering" in the law is supposed to refer to activities either (a) prior to the point where the gaseous stream is so processed and prepared as to be ready for interstate transmission, or else (b) prior to the point of sale to an interstate pipeline (Brief, page 7).

Taking the second point first, it obviously begs the question and proves nothing. If it be the decision here that Jupiter's service and activity between the platforms and its plant are really transportation of gas in interstate commerce, within the meaning and purpose of the law, as Staff contends, then Jupiter is itself an interstate pipeline by definition, and its activity after it takes delivery is not gathering, by their own definition number (b).

As to their first claim, notwithstanding the dozens, perhaps hundred or more of court and Commission decisions on the production and gathering exemption, Jupiter presents the novel thought that gathering means preparing the gas for interstate transmission.[8] Not a word of legislative purpose or correlation with the Congressional aim is cited in support. Instead, this new concept came from their witness, a petroleum engineering professor, who was obviously much more familiar with the oil business than with the numerous existing Gulf-to-shore establishments (3T554–561). He testified to the effect that his definition is the general business understanding of the term. On cross-examination, he felt compelled by his own logic even to apply it to two utter extremes—(a) if the gas were produced as a really dry gas, with no cleaning and separating necessary, then transmission would begin at the platforms (3T543), and (b) conceivably the gathering system could (but does not ordinarily) include as much as 300 miles of transmission to the possible location of a plant[9] (3T538, *et seq.*). Anyway, if preparing for transmission be the true test of gathering, nothing is shown here to refute the conclusion that the gas is fully ready for interstate transmission when it is separated and dehydrated the first time on the marine platforms (*cf.* 3T557). The remixing that occurs there after measurement is for the convenience and profit of the parties, to get the condensate to shore, and hardly changes the legal status of the gas.

Quite apart from those logical infirmities, and from the complete dissociation between the definition so fashioned and any evident purpose of the law, the testimony became useless on the final remark that this industry-oriented definition or usage first manifested itself "in the early 'forties or late' thirties" (3T577), which on its face disqualifies it as evidence of Congressional intent in the enactment of the Natural Gas Act of 1938.

The phrase "production or gathering" evidently first appeared in a bill introduced on March 6, 1936 (H.R. 11,662, 74th Congress), and in the resulting bill which was reported by the House Committee on May 13, 1936, H.R. 12,680, and House Report No. 2,651. The committee report does not explain the phrase, but it is significant that the analysis of the jurisdiction section re-emphasizes the purpose to establish a supplement to state regulation and not to deprive the states of any lawful authority. This, of course, is the theme of the Committee's report on the bill finally enacted (House Report No. 709 of April 28, 1937, on H.R. 6586, 75th Congress), which, again, does not define the words "production or gathering" but does add the rather cryptic explanation of the entire exemption clause: "The quoted words are not actually necessary, as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission * * *"

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[7] *Saturn Oil & Gas Company* v. *F.P.C.* (CA10–1957), 250 F. 2d 61.

[8] Nearly half the gas in this country never goes into interstate transmission at all, but is used in the state of production. Is Jupiter suggesting none of this is gathered?

[9] It will be recalled this was Commissioner Buchanan's objection to the enthronement of the processor as an exempt gatherer, in his dissent in the original Phillips case, 10 FPC 246, 294, n. 11.

Staff applies FPC decisions: The Staff presentation is that gathering ends at the two main platforms A and transmission there begins. Since that is where Jupiter takes possession, its activity is transmission and therefore is subject to regulation. Their conclusion is, "if Jupiter is engaged in any gathering at all, it is completed at Pure's and Phillips-Kerr-McGee's platform A."[10] (Brief, page 19.)

For this, Staff quotes the leading case, *Barnes Transportation Company* (1957), 18 FPC 369, 372, whose language has often been cited and undertaken to be followed with its definition of "gathering" as "the collecting of gas from various wells and bringing it by separate and several individual lines to a central point where it is delivered into a single line." The Commission adds that gathering ends at that point, also that transmission facilities subject to the law are those downstream from the point of "final commingling." For cases applying that rule, there are cited *Texas Gas Corp.*, 18 FPC 397; *Medina Gathering Corp.*, 30 FPC 227, and *Ben Bolt Gathering Corp.*, 26 FPC 825, affirmed, 323 F. 2d 610.

Conceding a certain amount of vagueness in the key terms, "central point" and "final commingling" (*cf.* 30 FPC 227 at page 233), it can hardly be denied that the two platforms "A" literally fit the definition. Both are "central" in the sense that well lines there converge (Exs. J-18 and S-4-A), both are the points of origin of Jupiter's two "single lines", and both are the points of "final commingling" so far as the two producers are concerned. The fact that various comminglings occur on down the line—either at the shore connection, or six miles inland, when for the first time all the gas gets into one pipe (Tennessee's), or at Jupiter's plant outlet—proves little or nothing because other comminglings occur still later on; indeed, so far as known, the literally "final" one does not happen until Tennessee's line crosses northwestern Pennsylvania. (30 FPC at page 245.)

Rather, as in Ben Bolt, Jupiter's lines are but an extension of Tennessee's supply lateral to take the gas gathered by the two producers, brought by them to their respective central points, and there commingled for transportation by Jupiter in interstate commerce, continuing the movement whch does not cease until the gas reaches the point of consumption in the far Northeastern states.[11]

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[10] It may be this concedes gathering status for the 15,000 Mcf moved up to Pure's platform A from their platform or sub-platform B in Jupiter's mile and one-half line No. 3 (see map). This would be relevant but hardly material.

[11] Note the factual similarity to Tennessee's gathering and transmission system in the Bastian Bay, Louisiana field and that of its producer, Pan American Petroleum. It is the conclusion of the initial decision that gathering has been accomplished at the central point in the field where all the gas going to the interstate lines has been assembled and commingled and that the lines extending from that point to the pipeline's platform are jurisdictional transportation functions. *Tennessee Gas Transmission Co.* (1963), 30 FPC 1477, 1496. The resulting Commission Opinion No. 413 found it unnecessary at that time to pass upon the jurisdictional status of the facilities (page 1481).

Jupiter relies on several early decisions of the Commission where gathering was discussed and more or less defined, but (a) the correlation of those cases with Jupiter's is not evident, (b) in none was it held that gathering means preparing pipeline quality gas ready for transmission and (c) all of them were pre-*Phillips* (1954), which makes them patently inapt to the present day and to the Commission's post-1954 program.

Far preferable to this verbalistic approach, the only rational search for the meaning of the word "gathering" is that which discerns and carries forward the legislative purpose, *viz.:*

(a) *The words of exemption:* The Court has often explained that the three words, "production or gathering" were meant to preserve to the states their responsibility to regulate those two activities.[12] That also is to be adduced from the Committee report cited. The states do not, of course, regulate gathering rates, but they do regulate well spacing, which (as suggested by Mr. Justice Douglas[13]) is evidently the state activity which was in mind. This only confirms the Staff's solution, which confines the gathering in this case to the well lines leading up to the platforms "A". At the same time, it adds no support for Jupiter's view that their "main" line is also gathering.

(b) *The total purpose:* Roughly once a year for the past 25 years, the Court has had occasion to enjoin upon the Commission, the profession, and the industry that the over-riding, all-important legislative purpose in the enactment of the law in 1938 was to provide a comprehensive system of regulation supplementing that of the states, that no element of the famed "Attleboro gap" was to survive, that "Congress intended to impose a comprehensive regulatory system on the transportation, production, and sale of this valuable natural resource."[14]

Jupiter is rather put to it to assure the Commission that a decree in its favor will not create a gap of non-regulation, indeed, open such a gap 38-miles wide. In Chapter VII below, there is quite fully answered their point that the area rate case, AR61-2, should give the Commission all the controls it needs to keep this element of cost within bounds through its control over the price level that Tennessee pays. As shown below, the fact is that if area rate applies at the platform this intermediate cost of Jupiter's service becomes a direct cost payable dollar for dollar by the consumers, while if area rate comes to the sale on shore, this cost of bringing the gas in necessarily will be one of the costs affecting the area rate level and equally will be borne by the consumers. Anyway, as of right *now*, no more graphic evidence can be imagined than this very case of the effects of the gap here existing up to this date, namely the charge that has been exacted for this 38 miles of transportation in an amount about five times more than the total cost of service.

Otherwise than as stated, the usual sources of legislative history offer little aid. It is surprising that, as often as the field of legislative history of the Gas Act has been tilled and plowed, its harvest remains meager and its yield lean. In *Phillips*, it is remarked, "The legislative history is not helpful. (347 U.S. 672, 688). Neither is it of aid for Jupiter to delve into the meaning of "gathering" in the oil taxation laws, where the legislative object is a quite different one; besides, the language they quote is so ambiguous as to fit most any solution here. Nor does it help to rely on the conclusions cited from *Ben Bolt*, 26 FPC 825, since the two organizations which were found or said to be gatherers in that case actually had applied here for certificates, and in issuing the certificates their prices were weighed and approved on the basis of their cost of service evidence; the statutory exemption was not the issue (see the initial decision therein, 26 FPC 825, 829).

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[12] *Interstate Natural Gas Co., Inc.* v. *F.P.C.*, 331 U.S. 682, *et multi al.*

[13] *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 603.

[14] The particular reference quoted is *F.P.C.* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1, 28.

It is concluded accordingly that the gathering in this case has ended by the time the gas reaches the platforms "A", where Jupiter's service begins, and that the statutory exemption of gathering does not avail to exempt Jupiter's service from regulation as transportation of gas in interstate commerce.

VI

DOES COST UNIT FOR REGULATION INCLUDE PRODUCTION ACTIVITY IN OTHER AREAS?

The most profound of Jupiter's many defenses is the plea the Commission's order puts the wrong unit under investigation. That is, the Company has a complete, separate division for its total oil and gas business, including some oil and gas production in Texas and elsewhere, and including its Rollover Field gas transportation function off the Louisiana shore. How and why, asks Jupiter, can the Commission select out and compartmentalize the one profitable portion of its gas business while ignoring the rest, where most of the profits have been invested (or consumed)? Their point is their gas and oil production enterprise loses much of what the transportation gains, and when the excess transportation revenues are balanced off, then only a fairly small and quite unexceptionable net return results.

It is an inadequate answer that their figures do not separate out the jurisdictional, interstate gas production from other gas and from oil, since, if their theory is correct, the technical burden to initiate the inquiry on that basis is up to the Commission and its staff.

Before the current facts are reviewed, some history is needed. The transportation service, or purchase and re-sale, began as the sole enterprise of the original firm, Marine, in 1950. As profits accrued, the exploration activities began elsewhere. Five years later the merger with Commonwealth brought it into association with many more such programs. Jupiter, since taking over in 1962, has continued and increased them.

Their current program is in evidence. They hold oil and gas leases in ten states and in Haiti, and have an interest in 122 wells, operating half of them. Some small part of it is in various Louisiana parishes, none off-shore. Production for 1964 was 115,094 barrels and 1,318,046 Mcf (at present rates, the gas is worth somewhat less than the operating cost of service for the transportation service as proposed herein). Some part of their gas goes interstate,[15] but no figures were given to show what proportion of gas, revenues, costs or return are from gas sold in interstate commerce (1T91, *et seq.*, 3T481).

Staff reported certain total figures for the "gas gathering, Oil and Gas Division" in S-3, showing oil and gas production revenues at $443,518, while direct production expenses came to $1,007,331 (apart from overhead allocations). After all deductions, current earnings remained of $362,189 for the entire division, including transportation. All of this from a total net plant capital account of $5.2 million, of which less than one million is in the Rollover transportation service (S-1, Sch. 6-A), which suggests perhaps 7 percent earnings.

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[15] Note this case is on their rate schedules numbered 7 and 8; the first six are not in evidence.

It is evident what occurs—the earnings of the transportation function, $1.7 million in 1962, S-1, Sch. 1—have been used roughly one-half to pay "dividends" to the preferred (see Chapter VII), and the rest has gone into the gas and oil exploration and production program, leaving only the small net revenue figure stated. *If* it should appear that a substantial part of the loss is in the search for, and development of, gas for interstate, jurisdictional sale, then, the claim is, the total jurisdictional function has no excess revenues and there is no occasion to question the transportation and sale rate schedules for Rollover Field.

Thus the question is what rate or rates are subject to investigation and determination in a single inquiry under Section 5. Turning to that section of the law, it says that, whenever the Commission finds "any rate, charge," etc. is unjust and unreasonable, the "Commission shall determine the just and reasonable rate * * *" As a corollary, Section 4 puts upon each natural gas company the requirement that "all rates and charges" shall be just and reasonable. Hence, so far as the statute is concerned, the Commission is doing just exactly what the law, in so many words, seems to contemplate, and the burden rather falls upon Jupiter to show there is something illegal about the staff's proposal based upon the Commission's order, or else that the inquiry into rate schedules 7 and 8 only is somehow so arbitrary as to offend basic standards.

Jupiter does make a plausible case to show that the inquiry into these two rates, ignoring the rest of their jurisdictional business, is at least unusual and will require some justification. Turning first to the few precedents there are on independent producers, Jupiter cites a number of cases to the effect that the costing unit to weigh and appraise in justification of a rate is the cost of the entire operation (citing *Hunt Oil Co.*, 28 FPC 623, and the *Caroline Hunt Sands* order of March 18, 1965, 33 FPC 583, in RI64-356). Turning next to pipeline regulation (as a species of public utility transport control), there is cited a group of cases to the effect that the rate for a single narrow service, among many to which the utility enterprise is dedicated, is not to be justified by carving out and arbitrarily allocating costs, as distinguished from a systemwide determination. For this there are cited *Chicago Board of Trade* v. *U.S.*, 223 F. 2d 348, 351; *American Louisiana Pipe Line Company*, 21 FPC 70, 101.

The trouble is Jupiter does not fit neatly into either of the categories discussed. Jupiter does not operate like the several cross-country pipelines with investments in the hundreds of millions which have incidentally a minor production function contributing a small share to the pipeline supply. In the typical pipeline case the production operations are "rolled in" with the much larger transportation functions in arriving at fair overall rates for transportation. Neither is Jupiter like Phillips or other very large independent producers having vast investments in wells scattered over quite an area, with complete gathering systems and, quite incidentally, a few thousand feet or few miles of transmission line either leading into their processing plants or connecting their plants with the main lines of their customers.

What is more, in the cases where all the production operations are rolled together for one rate justification, or where some incidental production is rolled in with the pipeline operations, it appears to be on the premise that all are merely elements of one ultimate service to one customer or group of customers. Where the pipeline, for example, seeks new discoveries to add insurance to its own reserves, the objective is the same in the long run as that of an added investment in the pipeline itself, namely, the continued service of the customers who rely on that line.

What makes it clear that Jupiter's case does not fit any of the precedents is the entire lack of any indication that the customers served by Tennessee—who are called upon to contribute this three-quarter of a million dollars or so per year in a search for oil and gas—have any real interest in such a search or stand to benefit from it. There is no suggestion that Jupiter's gas in other areas, found or yet to be found, will be of benefit to *these* customers.

The second objection is the incongruous amount—the law says that all rates must be just and reasonable, yet the net effect of Jupiter's case is to justify a rate that is five times too high on the basis that a good part of the profits is used to find gas for other customers (or conceivably for some of the same customers). A small margin of excess is frequently offset by averaging many rates and services, but here the margin on its face is too high.

Third, the usual reason for rejecting a study of a single pipeline rate, such as that for peaking service or winter service or the like, or some of those mentioned in the cases cited by Jupiter, is the extensive and uncertain accounting allocations required to carve out the cost attributable to a particular narrow operation out of many for which the same facilities are used. That point, too, does not apply here because the two sets of facilities are many miles apart and Jupiter already records the Rollover transportation costs quite separate from its production costs—they have to, because of the way the dividends (or really interest) on the preferred are geared to the net revenues of the transportation service, regardless of gains or losses elsewhere (see Chapter VII). Hence, these costs are kept separate, only very minor allocations are required, and there is no real accounting problem in arriving at true costs for the transportation service.

It is concluded, accordingly, that the patently unfair, unjust, and unreasonable rate for the transportation service can not be justified and made legal by offsetting the undercharges and losses incurred on other types of natural gas service located in areas far away and serving evidently quite different customers.

Note this is without reference to the results of the current area rate cases, like AR61-2 that Jupiter now wants to associate with. If it results that Jupiter's gas production in the other areas is all sold at the area rates, that would seem to moot the present claim that production and transportation must be rolled together.

Postscript: Some doubt remains about whether Jupiter should be called on for a better demonstration of the genuineness of the question it raises on this subject. Their witnesses kept talking about their exploration and production, and made many references to oil and gas, with no hint as to which made money and which lost money, and no hint as to how much of the gas production expenses and revenues pertain to jurisdictional service, *i.e.*, gas destined interstate. It is assumed that Jupiter relies only on the jurisdictional business and surely does not justify a high gas transportation rate by its losses in oil or in intrastate gas. Pretermitting the technical question as to who has the burden of proof, since nothing was said or done here by Jupiter to show just how much of the excess revenues were offset by losses in interstate service, there cannot but remain a doubt whether such figures, if Jupiter chose to produce them, would show any substantial justification or offset.

VII

COSTS AND REVENUES OF PIPELINE ACTIVITY, AND ALLOWABLE RETURN

Having concluded that the cost unit for regulation is the Rollover Field transportation and resale activity, excluding Jupiter's oil and gas production in other areas, it remains only to determine what the appropriate pricing basis should be, in all the circumstances, including a fair rate of return, and to apportion that cost between the transportation activity for Pure and the resale activity on the K–M–P gas.

Staff's exhibit, S-1, has constructed a "cost of service" applicable to the transportation activity and the resale of the K–M–P gas, with allowances for all direct expenses, appropriate allocations for the indirect, a depreciation expense allowance for the test year (1962) on a plant service life basis (as taken directly from the corporate books), tax allowances, and a return at 6.5 percent of the Staff's newly-constructed rate base. The result of the Staff's exhibit is to call for an annual cost of service allowance of $274,259 (aside from the cost of purchased gas), and the point therein which is of prime significance is the contrast between that figure and the actual revenue for the year 1962 of $1,944,697. Thus, to give effect to the recommended rate will reduce the return from $1,618,281 to $43,899. On this, Jupiter does not find itself in agreement.

As to the raw figures used there is no particular controversy; they are taken from the corporate books and were agreed to. That is, the correctness of the figures—apart from whatever they may stand for—was stipulated at the hearing. 1T248, 1T264.

Is Jupiter a private contractor? First off, Jupiter generalizes that the Staff has put it in the wrong field entirely, that Jupiter is not a "traditional pipeline engaging in a public utility transportation service" (what tradition is referred to is not clear), that Jupiter is merely a delivery agent for the producers, that Jupiter's cost of service and rate of return are irrelevant, and its contracts with the producers may be modified by the Commission only upon a showing that the producers for whom they act have found their agreed prices to be confiscatory and so burdensome as to force the producers out of business.

The view is earnestly expressed but ignores the law of the land. Whether it is a public utility or not, Jupiter is unquestionably a "natural-gas company" within the definition of the Natural Gas Act; Jupiter is found above to be in the business of transportation of natural gas in interstate commerce, for the account of Pure and within the purview of Section 1(b) of the law; and Jupiter's sale to Tennessee is unquestionably a sale of natural gas for resale in interstate commerce, which the law directly applies to—the very point of *Phillips*—and as such, by the words of Section 4 of the Natural Gas Act, its rates for such transportation and sale must be just and reasonable to be lawful.

In the light of the wide disparity between the revenues resulting from the present rates and the costs attributable to the service, the present rates are patently unlawful on their face because so obviously unjust and unreasonable, and it remains for the Commission under Section 5 of the Act to determine the rate to be hereafter observed and enforced. There is simply no statutory or other basis for the asserted claim that the rate becomes unjust, unreasonable and unlawful only when it is so high as to force the customer into bankruptcy. Jupiter's arrangements with the producers[16] and with the pipeline are indeed private contracts, as they say, but as mere pieces of paper called contracts, they derive their only force from such sanctity as the law gives to them; and the applicable law, here the Natural Gas Act, brands them illegal (as to their rates) and requires them to be modified accordingly.

Jupiter misconceives *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348, in claiming that Pure's solvency or ability to pay is relevant to the Commission's action on Jupiter's contract with Pure. That puts the shoe on the wrong foot; under Sierra, it is the possibility of Jupiter's insolvency, not Pure's, which could conceivably be of concern to the Commission under Section 5. There is, to be sure, a repetition of claims in Jupiter's brief that this order will be drastic in its effect on Jupiter, indeed disastrous; but, since the rate provides for a reasonable return for the only activity it regulates, it is plain that the dire conditions apprehended would only be the result of Jupiter's continued investing its revenues in oil and gas exploration in other areas at a considerable loss. If the results continue to be drastic, it is not due to the jurisdictional transportation activity.

Test year (1962): Jupiter makes quite a plea that cost figures based on the year 1962 are quite out of date, unrepresentative, and unsuited for a current rate order. First off, this plea comes with small grace from the side which has caused so much delay in this proceeding—the case began three years ago; but many months elapsed in the Staff's unsuccessful efforts to get access to the corporate records, after which the task must have been very considerable to sort out the company's gas transportation and sale function from its diverse other activities involving oil and gas production, bakeries, trucking, plumbing, real estate, etc. Thereafter, following the final conferences with Staff, some months elapsed for Jupiter and Tennessee to prepare their alternate proposal to lease the facilities to Tennessee. Finally, in December, 1964, the Staff's testimony and exhibits were served. Four months later the pre-trial conferences convened, and even then Jupiter announced it had not yet been able to study the evidence enough to determine which witnesses would or would not be needed for cross-examination (1T192). At the same time, its own evidence served out of time was admitted over objection, and Jupiter's request for a three-week delay in beginning the hearing was granted. In the meantime Jupiter had filed 13 or 14 separate pleadings with the Commission, including about six motions for continuance, and had also filed injunction suits in two United States District Courts. Without adverting to the motivation for the delaying tactics, it is enough that the delaying party be heard to complain of the staleness in the test year figures, if any there be, which has resulted from the delays.

Secondly, Jupiter had every opportunity in rebuttal to furnish the figures from a later and better test year; but, apart from the question of volume of deliveries, such important data as there is in the record pertaining to later years would suggest a lower rate, not a higher, that is, the evidence of possibly lower expenses and of evidently a lower rate base.

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[16] Jupiter strains at the leash to show it is not a seller to Tennessee of the gas it buys from K–M–P; that, in view of the peculiar pricing relationship, it is really an agent of K–M–P for the transportation of gas to Tennessee. The agency relationship is roundly denied and denounced by Phillips, the very principal they seek to be related to as agent; but anyway the point is irrelevant since, as shown above, Jupiter's transportation service from the central point in the Gulf to the shore connection with Tennessee constitutes transportation in interstate commerce quite as much covered by the law as its resale activity to Tennessee.

Jupiter's related argument that its transportation service for Pure cannot be included in the chain of costs to be borne by the public consumers is considered in Chapter IX below.

One item, pertaining to volumes delivered, is reserved in the above. Note, from Exhibit S–1, the Staff's recommended solution is to divide the dollar figure of its cost of service for 1962 by the Mcf volumes delivered that year, which produces its suggested rate of .518 cents per Mcf. But the volume figure varies from year to year, while the expenses are fairly constant. In round figures, the Staff used 53 million Mcf for 1962 to arrive at its recommended rate of .518 cents. For 1958, the volume was 46 million, for 1959 it was 49.4 million, and for 1960, 55.5 million (Exhibit J–11). But for 1963, the volume figure was 47 million Mcf, down 11 percent from the year before (7T1076). On the other hand, the expenses are steady—they do not vary "significantly at all" according to the volume of gas passing through the pipes (6T889).

The result is plainly to suggest that the final net rate to be prescribed should be in terms of a flat number of dollars per year or per month, or merely a dollar ceiling on the monthly invoices equal to one-twelfth of the annual cost of service. There was evidence that the operating expenses are expected to be fairly constant through 1976, but that volumes are expected to decline beginning in 1970 (6T999–1000). With expenses (excluding purchased gas) remaining steady, there is no reason to inflate or diminish the return based on the variance in the volumes, and the order here subjoined so provides.[17] With this element provided for, no substantial objection or question remains with respect to the 1962 test year.

Rate of return: The Staff's recommended rate of .518 cents is based upon a rate of return of 6.5 percent, which the Staff witness repeatedly called "illustrative only." The Staff undertook a financial analysis of the company as a basis for recommending a rate of return, but because of the intricacies of its capital structure the Staff witness found himself unable to determine the "cost of money" for Jupiter and therefore felt not in a position to recommend definitively a rate of return (1T48, 3T486).

The background is this. The original investor was Marine Gathering Company, formed specifically for the Rollover Field project. By 1955, Marine's assets were transferred to Commonwealth Oil Company, with an exchange of stock (4T693). Commonwealth was an oil exploration company with interests in Florida and elsewhere. Seven years later Commonwealth merged with Jupiter Corporation, which again involved a stock exchange. But the former owners of Commonwealth received a new preferred stock issue of Jupiter, the surviving corporation, with a very special, cumulative dividend arrangement to the effect that dividends up to a dollar and a half per year per share would accrue and be paid if, as and when the Rollover Field gas transportation activity earned that amount; and this dividend is payable regardless of the earnings or losses of the company generally, and regardless of Jupiter's Oil and gas production elsewhere. At the same time, there was fixed a redemption value on the preferred at $26.50 per share (or $25 on liquidation), which is said to be payable ahead of any contractual indebtedness of Jupiter (Exhibit S–5, Schedule 5–6). The preferred is convertible to common, but on a declining basis.

The result is that the 559,899 preferred shares (held by the former Commonwealth owners) have a dividend claim at $1.50 to the first $800 thousand plus of annual earnings of the Rollover Field gas transportation operation; and, on liquidation, they have an apparent priority over any creditors or claimants to the first $14 million of assets (Ex. S-5, Schs. 3-4-5); what is more, no new credit obligations may be assumed by Jupiter except those agreed to be junior and subordinated to the prior right of the preferred to the "gas gathering" revenues and assets on liquidation (*id*). With these figures, contrast the Staff's proposed allowance of less than $43 thousand in annual return (or five percent of the above annual dividend requirement), based on property whose actual original cost was $1.59 million (or 11 percent of the above liquidation liability). Whether this complex arrangement was dictated to segregate the Rollover Field gas transportation and resale operations from the rest of Jupiter's many activities, it is evident that the preferred stands more nearly in the relation of a purchase money mortgage, with the same priority to the transportation revenues that would attach to a revenue bond.

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[17] Otherwise, as suggested at the hearing (6T898), it is evident that it could be some time yet before the attached order becomes effective, in which event it might not be inappropriate to reconsider the single question of rate level on the basis of figures then more current.

Actually, the gas business is the smallest of Jupiter's six separate and diverse operating departments, the corporation is otherwise a substantial concern showing assets of $39 million and a net worth of $9 million (S-1, Sch. 7). Its long-term debt of $14 million is carried at an average interest rate of 6.2 percent (S-1, Sch. 4).

In the light of this peculiar and unusual "stockholder" relationship, the Staff found it impossible to compute the cost of capital for Jupiter or to derive a rate of return to be recommended on the basis of the cost of capital (1T51). Instead, a cost of service was prepared upon the "illustrative" 6.5 percent rate of return on the basis that figure represents the highest rate allowance the Commission has made for pipeline operations (1T22).

On some obscure basis, Jupiter objects that the Commission may not conclude upon its own determination and judgment what the appropriate rate of return should be, unless some witness at the hearing has espoused the rate to be selected so that it could be cross-examined. No such rule is known (see, *e.g.*, 17 FPC 685, 703); the authorities relied on refer to evidentiary findings of basic data, concrete facts, and records of past events which are used to form the basis of a judgment figure such as rate of return, certainly not to the judgment end-process itself. If, as in the recent case of *Central Illinois Public Service Company* v. *F.P.C.*, 338 F. 2d 682 (CA7-1964), the Commission may form its own judgment and determination on the engineering capacity of a gas line from the facts in the record, it can equally produce its own judgment figure for the rate of return—after all, that is perhaps the ultimate purpose for which it was established in the first place as a specialized, expert commission. *Cf.*, *e.g.*, its opinion in *Hunt*, 28 FPC 623, 665.

Next, Jupiter objects there must be some correlation of its return with that of other enterprises with similar risks, citing such classic cases as *Bluefield Water Works Improvement Co. of West Virginia* v. *P.S.C.*, 262 U.S. 679, 692. But they rely on the wrong risk. The cases do not contemplate rating of physical hazards, marine dangers, hurricanes and acts of God—real and serious as those may be for off-shore pipe line operation. These costs can always be insured against and/or recompensed, under the Commission's standard accounting system, and amortized in the rates. What the cases do stand for is spelled out in a work under the authorship of Jupiter's witness, Dr. Paul J. Garfield (and W. F. Lovejoy), "Public Utility Economics" (1964), at page 121:

> The term "risk" is subject to several different interpretations. Technically, there is a difference between "risk" and "uncertainty," as pointed

> out by Professor Knight. Risk is susceptible to measurement and thus to predictability within the limits of probability analysis. Risks such as death, fire, illness, and so forth are readily insured against when large numbers are used. Uncertainty is not susceptible of measurement and thus cannot be predicted and insured against. It is uncertainty, in this sense, which is the basis for competitive profits. We bow to usage, however, and substitute the word *risk* for *uncertainty.* Risk in most public utility economics is of the "non-quantitative" type. See Frank H. Knight, *Risk, Uncertainty and Profit* (Boston: Houghton Mifflin Company, 1921), pp. 19 ff. and Chapter VII."

In dozens, perhaps many more, examples to numerous to require citation,[18] the Commission has allowed pipe lines from 6.0 to 6.5 percent, none apparently over the latter figure. As spelled out in the case of *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944), the economic risk is so much the less where the markets are established and the revenues quite secure. Jupiter's long-term contracts, assured market, and substantial supply reserve assure that its economic risk is at least fairly comparable to that of pipe lines generally. The allowance of the same return assures a close relation to the earnings of these comparable enterprises. At the same time, in view of the peculiar preferred stock arrangement just discussed, there seems to be no opportunity for any return on the common equity segment of the capital. Normally, for pipelines this return is about 10 percent (for a list of examples, see 28 FPC 482). A higher rate (than 6.5 percent) might have been allowable, had this case come along in 1950 when off-shore transportation was new and untried, experimental and obviously risky in the economic sense. Jupiter could have then claimed with reason a most unusual allowance for its ingenuity and resourcefulness. But that allowance by 1965 has long since been collected, see the figures above, and with the period of research and development, so to speak, long since past and well compensated, no reason remains for a future return allowance any different from that of other pipe lines.

Adjustment of rate base to normalized depreciation: One adjustment to the Staff's determination pointed out in Jupiter's brief, appears justified and required, and its net result is to increase the allowable rate from .518 cents/Mcf to a higher figure of .632 cents/Mcf. This comes about from an increase in the rate base, and consequent return, after constructing a new and normal depreciation requirement for the properties was developed. The background is this:

The first pipeline was laid in 1950, and practically all the investment was installed and put in service by 1953. Not feeling called upon to keep its records or justify its rates on a public utility basis, Jupiter and its predecessors elected to record pipeline depreciation by the several accelerated-rate methods permitted for tax purposes by the Internal Revenue Code. By the time of the test year used by the Staff, 1962, this depreciation policy resulted in a very large accrued reserve, about 58 percent, and correspondingly overreduced the net plant balance from $1,598,886 to $675,376, the figure used by the Staff as the rate base in computing its 6.5 percent return.

That is to say, the Staff's net rate base figure is $675,376, which is comprised of gross plant totaling $1,598,886 (original cost of pipeline and separation plant facilities), less book depreciation of $929,378, to which was added $10,868 of allocated general plant facilities. Exhibits S-1, Sch. 6-A.

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[18] See Leventhal, "Rate of Return—Comparable Earnings Standard" (1965) 74 Y.L.J. 989.

The original actual cost figure of $1,598,886 used by the Staff is that remaining after eliminating a "write-up" of the plant account in the amount of $798,220. For consistency, the Staff also reduced the record depreciation in the same proportion (1T29). As to the several different write-ups claimed, surely no answer is really needed to Jupiter's plea (Brief, page 62) that various acquisition adjustments and contract evaluations which inflated its plant account several times over its true original cost, should now be reckoned as part of its rate base. It is the view that the industry has long since outgrown that sort of approach; indeed, that it leads to the very antithesis of the law's standard, "just and reasonable" rates.

The accelerated rates of depreciation used by the company to compute its income tax presumably was and is correct for that one purpose. However, the realities of regulating rates require a representative rate base which in turn is based on a normal reserve requirement. For most pipelines before this Commission this requirement has reflected straight-line depreciation related to the servce life of the property. This results in a fair allowance of return, and a consequently just and reasonable rate. The tax depreciation is simply the law's method of figuring the income tax, and its only reality is an indirect method of reducing the taxes payable in the early years of the property. It does not mean the useful life of the pipelines is any the less, and without some such relationship it has little relevance to ratemaking.

This oversized reserve was not lost on the Staff's witness; however, he announced himself "estopped" from using a normal rate base valuation. He viewed the entire book reserve as already collected from the "ratepayer" (actually mostly from Pure, the larger producer) and indicated that to construct a new and realistic depreciation reserve would be tantamount to writing up the rate base and permitting a second recoupment from the ratepayer of the same plant (2T372).

By whom or by what the witness was estopped he did not say; but as a precedent for a substantial write-down in the reserve and for normalizing upwardly the rate base, there is referred to a case known as *City of Cleveland* v. *Hope Natural Gas Company*, 3 FPC 150, 167, 203 (1942), affirmed, *sub nom. F.P.C.* v. *Hope Natural Gas Company*, 320 U.S. 591 (1944). Hope had accumulated an excessive book reserve and the Commission concluded that "where a large part of the company's business is brought under regulation for the first time and where incorrect depreciation and depletion practices have prevailed, the best procedure is to deduct the reserve requirement in computing the rate base." Accordingly, the Commission constructed the proper reserve requirement, based on straight-line service lives of the properties, and reduced the book depreciation reserve from $39,000,000 to $22,000,000. This resulted in increasing the rate base by a corresponding amount, up to nearly $30,000,000. It was the dissenting Commissioner who, like the witness here, pointed out that excessive depreciation charges had already been collected from the customers and should, in his view, not form a part of the rate base (page 193). But the Commission, since it was prescribing rates for the future, accepted the reserve study presented by the Staff, which had the effect of marking down the depreciation reserve and raising the base to the level called for by normal depreciation requirements.

The Staff's point that establishing a normal rate base would permit a second recoupment proves entirely too much. The fact is Jupiter had a 1962 net revenue from its Rollover Field transportation operation of nearly $2,000,000,[19] and since its business has been steady and its net transportation rate margin unchanged, the company, or at least its preferred stockholders, has collected back over the years prior to regulation many times more than the original invested cost (just as the stockholders in *Hope* had been collecting an excessive return during its unregulated years). If Staff's theory is that the new rate now to be fixed must not allow a second (or tenth or fifteenth) recoupment, then no return can be allowed at all![20]

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[19] $1,944,697 computed from Exhibits S-1, Schedule 1; S-2, Schedules 1-2.

Bearing in mind that a rate order under Section 5 of the Natural Gas Act is to fix the rate for the future and not to incorporate a reparation for the past, and in view of the special circumstances discussed in the "rate of return" section above, it is concluded that the new rate to be, as the law says, "thereafter observed and in force" must be that resulting from a currently depreciated property valuation, quite unaffected by excessive rates of the past and equally unaffected by the accelerated depreciation used in figuring taxes. Both abnormalities are irrelevant to the future and to what is a just and reasonable rate for the future.

A revised computation for this purpose is set forth in the appendix and results in a normalized depreciation reserve of $431,624, and a rate base of $1,173,130 (the balance of the actual investment). After corresponding adjustments of income tax on the return, the new cost of service for the Rollover transportation function becomes $334,859. If this figure is applied to the 1962 volumes, the unit rate per Mcf would be .632 cents, or 20 percent more than the Staff's .518 cents.

Note this is not computed on the customary predicted straight-line useful life basis because it would be difficult to ascribe a useful life for this submarine line and there is no evidence on it. It seems more realistic to use the exhaustion of the gas reserves as a guide. On this question, a study as of only one month before the test year revealed that 27.08 percent of the original reserves had been withdrawn and 72.92 percent remained (6T999). Since—barring the possible chance of new discoveries—it is the total depletion of the field that will mark the certain end of the useful life of the lines, it is that proportion that has been used to normalize depreciation and arrive at a reserve requirement.

It is somewhat a coincidence that the actual dollar figure of reserve requirement is very close to what would result from the useful life basis at the customary 3 to 3.5 percent per year rate. It is indicated for this case to be $431,624, while that on a 33-year service life basis, or at the rate of 3.03 percent per year, would be $434,696; while if based on 3½ percent a year (which the Staff said is normal) would be $502,074. By way of further reference, the Commission's "FPC S-159, Depreciation Practices of Natural Gas Companies, 1961," reports that 31 pipeline companies had an accumulated provision for depreciation of 26.2 percent of their gas plant investment, which was being accumulated at the annual rate of 3.4 percent.

Conclusion: It is concluded, accordingly, that the proper unit for regulation of Jupiter's enterprise (excluding its gas production in Texas and other states which will be subject to area rate control) is its entire transportation and resale operation from the Rollover Field offshore Louisiana; that the rate base attributable to that operation is, for the reason stated, in the net amount of $1,173,130; that no recognition can be given to various write-ups, contract valuations, acquisition costs or other intangible valuations in excess of the net depreciated original investment; that the rate of return to be hereafter allowed should be computed at 6½ percent (as in the case of other pipelines);

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[20] *Hope* had already earned back its total investment "nearly seven times." (320 U.S. at 604.)

and that the resulting cost of service allowable, not inclusive of the cost of purchase gas, is $334,859. The specific application of that costs of service (which includes the return so computed) to the resale of the K–M–P gas and to the transportation of Pure's gas is the subject of the following two chapters.

Postscript: On the general approach to the rate level, Jupiter's witness Garfield presented an extensive study (J–17) of the prices paid in quite a number of other cases for this intermediate service between the gathering point and the pipeline, many of them collecting several cents per Mcf, all for the purpose of showing Jupiter's rates are reasonable. The opposition counters that the small volumes of gas in those cases account for the high rate, and offers other examples where the price is only a fraction of a cent. The answer to these contentions is none of those was a rate case, in none has the rate been examined and found just and reasonable (5T811, 822), which makes them unacceptable here. (*P.S.C. of New York* v. *F.P.C.*, 287 F. 2d 146 (CADC–1960), cert. denied, 365 U.S. 880 (1961)). About all they prove is that many more rate inquiries, such as here, are indicated.

VIII

APPLICATION OF COST OF SERVICE TO RESALE OF K–M–P GAS

It appears to be unquestioned that Jupiter's resale to Tennessee at the outlet of the Jupiter plant, 29 miles on shore and nearly 40 miles from the point where Jupiter receives the gas, is a jurisdictional sale such as the law describes, namely, a sale of natural gas in interstate commerce for resale, as soon, at least, as it is agreed that Jupiter's tortured attempt to reform the sale into an agency relationship is denied, for the reasons stated in Chapter IV. Secondly, as a jurisdictional resale, it is irrelevant whether any of Jupiter's prior service up the line might constitute "gathering" exempt from the law,[21] although, as stated in Chapter V, no such view is here agreed to. In Chapter VI it is concluded that the cost unit for regulation of Jupiter is its total Rollover Field activity, namely the transportation for Pure and the resale of the K–M–P gas, while in Chapter VII it is concluded that the cost of service, including return, attributable to both activities is $334,859 in addition to the cost of purchased gas from K–M–P. Of the total volume for the test year, 1962, 38.48 percent is that derived from K–M–P by purchase and resold to Tennessee (Ex. S–2, Sch. 2). Hence the proportion of the cost of service applicable to the K–M–P resale arrangement comes to $128,854, based on that ratio of volumes. It remains, therefore, only to fashion an order which will have the result of reducing Jupiter's sale price to Tennessee to that amount.

It is claimed that to do so will bring on many complications, mostly resulting from the rate provisions in Jupiter's purchase contract with Kerr-McGee and Phillips, which technically are not in this case or subject to its sanction. The point is derived from the identical pricing provision contained in Kerr-McGee's Rate Schedule No. 56, for its sale to Jupiter, and Phillips Rate Schedule No. 329, for its sale to Jupiter. In each, the price to be paid by Marine-Commonwealth-Jupiter to the two producers is the "price per Mcf provided to be paid during the same period" by Jupiter's buyer (formerly Niagara Gas and now Tennessee) *minus* what is evidently the agreed charge for Jupiter's service in terms of a variable number of cents according to the average daily quantity each month, which works out, at current averages, to 2.4 cents per Mcf. Thus, as Jupiter points out, when they first started to sell to Niagara at 16.4 cents in 1953, Jupiter (then Marine) paid K–M–P 16.4 cents minus 2.4, or 14 cents. Five years later, the price to Niagara and later Tennessee went up to 21.3333 cents and Commonwealth-Jupiter continued to receive 2.4 cents, paying the balance, or 18.9333 cents, to the producers.

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[21] *Medina Gathering Corp.*, 30 FPC 227.

The case was tried on the presentation that, as a result, any reduction by the Commission in this case in Jupiter's price to Tennessee would, because of the contract provision just cited, have no effect at all on Jupiter and would merely operate to reduce Jupiter's payment for its gas purchase by the same amount. This evidently moves the Staff to its view (Brief, page 37) that a reduction in the 2.4-cent charge would effect an increase in K–M–P's charges to Jupiter, but this the Staff counters by its concluding recommendation or recommended finding that the reduction of the 2.4-cent per Mcf charge under Jupiter's FPC Rate Schedule No. 8 (its sale to Tennessee) "results in a reduction in Tennessee's purchase gas costs." This is based on the Staff witness testimony recommending that the Commission's order shall revise Jupiter's Rate Schedule No. 8 on its sale to Tennessee to call for a price consisting of (a) Jupiter's lawful and required cost price as otherwise approved by the Commission with respect to the cited rate schedules of Kerr-McGee and Phillips, plus (b) the sum of .518 cents per Mcf.

That solution has the benefit of precedent, see the Medina Gathering Company case cited above. It also meets the approval of Kerr-McGee and Phillips, whose brief says: "The Commission may take the approach of directing Jupiter to collect from Tennessee an amount representing the just and reasonable rate for its services, in excess of the rate that the Commission sets for Phillips-Kerr-McGee * * *"[22]

The confusion caused by the understanding of Jupiter's purchase contracts, as above outlined, has resulted in frantic arguments notable mostly for the extremity of the positions. Jupiter apprehends the net effect of the Staff recommendation would be to increase K–M–P's net revenue, quoting the Staff brief at page 37, from which follows a series of legalisms to the effect that this is beyond the Commission's power. On the other hand, Kerr-McGee and Phillips appear to apprehend that the effect of the recommendation would be to decrease their revenues, and their brief is devoted mostly to a frenetic presentation to the effect that their rate schedules are not before the forum and, whatever else occurs, nothing must happen to disturb their arrangement or reduce their sale price.

The trouble with all of these complications and confutations is that they overlook another and equally important section of the producers' rate schedules under which they sell to Jupiter, both of which are in this record as items by reference. Aside from the provision mentioned, which by itself would seem to reduce the sales price whenever Jupiter's resale price reduces, Supplement No. 2 is also a part of each rate schedule, consisting of a supplementary agreement of March 18, 1953, which was filed to become effective November 5, 1958. Referring to the price provision quoted above, the supplement in each case reads:

> * * * If at any time and for any reason Marine (now Jupiter) is required to reduce the amount per Mcf specified under said item (iii) as the adjustment to be made to the applicable price [that is the credit as ex-

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[22] The Staff testimony is at 1T44 and 2T424. The K–M–P statement is from their brief at page 8.

> plained above, resulting in a 2.4-cent charge by Jupiter] * * * then the price payable to Phillips and Kerr-McGee under said subsection (b) shall not thereby be reduced, but shall be increased by an amount per Mcf equivalent to the amount per Mcf by which such amount specified in said item (iii) or receivable by Marine is reduced, to the end that Phillips and Kerr-McGee will receive for gas delivered under said contract the applicable price per Mcf less only the amount per Mcf to which said amount specified under said item (iii) is reduced or the amount per Mcf actually received by Marine for gathering of such gas and condensate.

The result of all this contractual shuttlecock would seem to be that the two adjustments cancel out, that is, that under the first clause, Jupiter's purchase price goes down by the amount of the reduction in Jupiter's sale price, but under the second clause Jupiter's purchase price goes up by the amount of the reduction in Jupiter's net margin. With those amounts the same, it results that the producer's sale price remains unaffected by this order and by the reduction in Jupiter's sale price to Tennessee.

Of course, the hyper-technicality can be asserted that the second adjustment is not available to this case because it applies a provision of Jupiter's contracts with its producers, which were not the announced subject of today's investigation. The answer is more clear than the question—the order herewith is directed at the rate which is before the forum, namely Jupiter's Rate Schedule No. 8, and the direct incidence is only upon that sale rate. It is quite true that this order, in its present compass, cannot require a change in the two producers' rate schedules, but the answer is there is no present need to do so, nor occasion for it, and it is specifically found that the intended purpose and effect of this order is not to affect the rate level under those schedules.

Notwithstanding Kerr-McGee-Phillips' fervent plea that nothing be allowed to happen here that affects them, it is not clear how the Commission could go further than this in the present matter—the producers are sanguine indeed in asking that the Commission's order allay the possibility of vexatious litigation concerning its possible effect on their contract to Jupiter. It is, after all, not the order itself which even suggests any change in the producers' sale price to Jupiter; if that suggestion arises, the result comes instead from the two provisions of the contracts which the producers themselves signed and which seem more or less to relate their sales price to Jupiter's sale price and net revenue, both of which are very much the Commission's responsibility.

Certification status: After this record closed, the certification status on Jupiter's purchase and on its sale underwent a certain change, but in a case not here consolidated. On August 11, 1965, there issued the Commission's Opinion No. 470, in *Phillips Petroleum Company*, G-16611, *et al.*, which took the following actions:

(a) issued a permanent certificate to Phillips and Kerr-McGee for their sale to Jupiter;

(b) limited the initial price in that sale to 18.5 cents per Mcf effective July 23, 1964 (the previous price was, as stated, 21.3333 minus an average of 2.4, or 18.9333 cents);

(c) deferred decision on Jupiter's application for a certificate for its resale to Tennessee of the gas purchased from K-M-P; and

(d) conditioned the temporary certificate issued in 1962 for Jupiter's sale to Tennessee to require that "as of July 23, 1964, the price provided in the

rate schedules covering the sale to TGT of the gas obtained from Phillips and Kerr-McGee shall not exceed 20.9 cents per Mcf."
Whether in fact the adjustments and refunds called for by that decision have since August been made, this record is not aware.

Application of cost of service: In Chapter VII above it is developed that the allowable cost of service for Jupiter's two services is $334,859 per year plus, of course, the cost of purchased gas. Applying the relative volumes for the test year, 1962, as shown in Staff's Exhibit S–2, Schedule 2, lines 14 and 22, the proportion applicable to the K–M–P resale arrangement is $128,854.

The Staff proposal is to follow the customary route and compute a rate per Mcf, dividing the total cost of service by the number of Mcf carried and sold during the year. As stated, this has the effect of reducing Jupiter's return as the volume goes down when in fact the expenses are expected to remain relatively constant. Indeed, the parties themselves have proposed a flat rate in their certification application. Accordingly, in order to insure against unjustified changes in the return due to changes in the volume either way, the order here subjoined directs the revision of Jupiter's FPC Rate Schedule No. 8 to limit each monthly charge, otherwise at the contract rate, to the sum of (a) the cost incurred for purchased gas during the same month at the rate lawfully in effect for Kerr-McGee and Phillips, and (b) one-twelfth of $128,854, or $10,737.83, except that the invoice for December of each year may make up any deficiency for that year.

Postscript: K–M–P's brief complains with heat that the examiner denied their right to file a rebuttal case, citing constitutional authorities. Some rebuttal, on useful issues, was in fact admitted (7T1176), the rest was denied not out of disparagement of any one's rights, but because two of the topics are irrelevant and the other immaterial (FPC Rules 1.26). The topics were: (a) whether dehydration on the platforms prepares the gas sufficiently for long distance transmission, (b) on which measurement Tennessee pays for its purchase, and (c) testimony of a learned economist as to where the area price proposed in another docket should be applied. Neither (a) or (c) is controlling *here*, and point (b) is insignificant once it is agreed title passes at the outlet of Jupiter's plant.

IX

COST OF SERVICE APPLIED TO THE TRANSPORTATION FOR PURE

While Pure is not a party here, and may not be aware of this proceeding, its undertaking carried forward into the Commission's order on its rate settlement, as quoted on page 1101 above, is clear and undubitable that if and when Jupiter's 3.4-cent rate reduces for any reason, the benefit will pass on to Tennessee and will necessarily affect Tennessee's cost of service and have its eventual effect on Tennessee's resale price and the consumers' costs. For completeness of the record it may be appropriate to suggest that the Secretary send a copy of the order here subjoined to The Pure Oil Company at its recorded address. Finally, it hardly seems necessary also to incorporate in the order an enjoinder that Tennessee no longer continue to pay whatever price is invoiced to it (confessedly assuming it to be correct, 6T912), but shall take care to adjust its payments according to the change in Jupiter's rate.

This procedural refinement is essential if the result of the proceeding is to benefit consumers. The point is the rate being altered by the attached order is Jupiter's rate to Pure, and the rate order does not change Tennessee's costs or the consumers' burden until Pure does in fact pass the rate benefit on to its customer, Tennessee. Pure's rate to Tennessee is not technically in this case, but in view of the undertaking quoted, as cited above, there is no reason to doubt that the benefit will be transferred as soon as it occurs, nor to doubt that it will create its reaction in Tennessee's cost of service and eventually in Tennessee's rates, leading to a reduction in consumers' costs.

However, to all of this transfer of the benefit on to Tennessee for the consumers, Jupiter flatly objects, pointing out that the 1957 arrangements and contracts made Jupiter's charge purely upon Pure alone. Jupiter protests it was not a party to Pure's 1962 rate settlement, ostensibly knew nothing about it, and did not consent to Pure's transfer to Tennessee of the economic incidence of Jupiter's charge. Jupiter points to some undefined but "elementary contract law that where considerations are exchanged and relationships are established among three parties to a single contract, and ancillary two-party contracts are executed in consideration of that three-party agreement, two of the parties may not thereafter amend the basic three-party relationship without the consent of the third party." (Brief, page 30.)

The answers to this casuistry are three—

(a) No citation is given for this "elementary contract law", and this forum is not aware of it, nor of its applicability here;

(b) The 1957 contracts do not contain any restriction on the freedom of Pure and Tennessee to revise the price arrangement between them;[23] and

(c) The change is not of concern to Jupiter or harmful to it—Pure is still the contracting party bound to pay Jupiter's price. Pure has merely indemnified itself by getting agreement from Tennessee, as its customer, to pay or receive the effect of any change in this one element of Pure's costs. As such, agreements of this kind are quite common, as in the case of price adjustment clauses for changes in cost of fuel or of purchased gas, or in the many outright "cost of service" rates where the entire rate goes up or down as the costs change. It is novel, and flatly unacceptable for Jupiter to announce a new doctrine that a purveyor of service to a utility has standing to object to the utility's passing on his charges *pro tanto* to the utility's customers.

The area rate case and its application: At least understandable, if not agreed to, is Jupiter's further point, applicable mostly to the transportation rate for Pure, to the effect that the pending area-rate producer price proceeding will moot this entire rate matter (Docket No. AR61-2, on which hearings lately closed). The syllogism is this:

(a) The area rate decision, when it comes, will fix a flat price for Pure's on-shore sale to Tennessee;

(b) Since it will be a flat price, only Pure will be affected thereafter by Jupiter's transportation charge to Pure and Tennessee's costs will not escalate or descend upon a change in Jupiter's rate;

(c) Thus the premise of this proceeding fails since the ultimate charge to the public consumers will no longer be affected;

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[23] In fact, flatly contrary to Jupiter's claim is the following express language of its own contract, the paper of January 2, 1957, entitled "Agreement Relating to Contracts" and signed in the name of Marine by President Liese, by Pure as the seller and by Tennessee as the buyer (from copy in docket file G-12583, p. 14):

During each of the additional respective periods from November 1, 1958, to November 1, 1962, November 1, 1962, to November 1, 1966, and November 1, 1966 to the expiration of the term hereof, the price per MCF to be paid shall be determined by agreement between Buyer [Tennessee] and Seller [Pure] * * *

(d) All the more would this be true if, as claimed by Jupiter, Pure's price adjustment proviso (changing its total price according to its transportation costs incurred) were invalid and ineffective.

It is a too simple answer, really an oversimplification, as made by the Staff's reply brief, to the effect that the area rate case is still in process and it need be considered only when its result unveils. Conceivably, that case might become effective before this one; anyway, with the Commission so far committed to the area price policy, it would be irresponsible indeed to ignore its incidence here.

Jupiter presupposes that the area rate will fix Pure's price to Tennessee for its delivery on shore, *ergo*, any surveillance of Jupiter's price or rate will affect only the producer and mean nothing to Tennessee or its customers down the line. In its reply brief, the Staff concludes, "It may be that as a result of the Commission's determinations with respect to area rate policy in Docket No. AR61-2, the public will no longer be affected by Jupiter's transportation charge to Pure." How that could be true is not developed, explained, or here apprehended.[24]

Perhaps it is enough that even if Jupiter were right, it is wrong. Even if, under an area on-shore flat rate, Pure were to be the only *direct* beneficiary of a reduction in Jupiter's price for transportation, still Pure is as much a part of the public as is any other recipient of the services regulated by FPC, and the law's prescription of just and reasonable rates for transportation of gas in interstate commerce does not deny producers any benefit therefrom. But more to the point, the costs incurred by producers generally are of course most significant in fixing the area rate; and, when a cost element of the producer's sale price covers the receipt of a jurisdictional service—transportation—that cost must be regulated if the purpose of the law, fair prices to consumers, is to be served.

The cost of service applied: In Chapter VII above it is developed that the allowable cost of service for Jupiter's two services is $334,859 per year. In Chapter VIII, the proportion applicable to the K–M–P resale arrangement was fixed at $128,854, based on the volumetric ratio. The balance, or $206,005, is chargeable for Jupiter's service to Pure under Jupiter's rate schedule. As in the case of the K–M–P resale, with the volumes expected to decline while the expenses remain relatively constant, there is no reason to inflict upon Jupiter a flat rate per Mcf, nor *vice versa.* Accordingly, the order here subjoined directs the revision of Jupiter's FPC rate schedule No. 7 (Item D here) to limit each monthly charge, otherwise at the contract rate, to one-twelfth of $206,005, or $17,167.08, except that the invoice for December of each year may make up any deficiency for that year.

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[24] A much more realistic view of the forthcoming area rate appears to be the rationale of a pleading filed for the FPC in the Court of Appeals for the Seventh Circuit on October 27, 1965, in *The Jupiter Corporation* v. *F.P.C.*, where Jupiter seeks an order permitting its reintervention in the area rate proceeding. In the pleading it is pointed out that even if the area price should cover the transportation to the on-shore terminus of the pipeline and the cost of that transportation were to come out of the area rate received by the producer, in any event such jurisdictional transportation service by Jupiter, even if performed for the producer, would be for regulation by FPC on a cost of service basis. In other words, whether the area rate is offshore or on shore, Jupiter's price necessarily will affect the consumer either directly or indirectly and requires to be regulated accordingly.

X

STATE TAX REIMBURSEMENT RETAINED BY JUPITER

Of all the remarkable aspects of this case, none is more amazing than the disposition of about $2 or $3 million of an extra charge by Jupiter against its customer, Tennessee (and thus upon *their* customers down the line), for the State of Louisiana gas severance tax, but never paid over to the producers or to Louisiana or to anyone else. What is more, this question is not mentioned in the order giving rise to this case, nor is it discussed in any of the evidence filed in advance of the hearing. Instead, it developed only due to the assiduity of counsel for the different intervenors, who questioned certain figures in the tables of the Staff exhibits.

The background is this: In 1958 (3 years before Jupiter took over the operation), there was enacted by Louisiana an increase in the gas severance tax, which became effective December 1, 1958, see Order No. 210, 20 FPC 785. The tax is laid on the producer. Because of a jurisdictional dispute between the United States and the State of Louisiana as to the status of offshore production, there was *then*, at least, some question whether the State tax would apply to the Rollover field production located about nine miles from shore.

No question here arises about the 60 percent of the gas that comes from Pure's production transported by Jupiter because Pure concluded (evidently) that its production is not subject to the tax, at least they have not sought any reimbursement from their buyer, Tennessee. But for the rest, the sale and resale of K-M-P's gas, the two producers apprehended the possibility they might some time be called upon to pay the tax and, accordingly, filed increases in their rate to Jupiter of 1½ cents per Mcf, representing the share of the tax increase which their sales contract entitles them to collect over from their buyer (at least entitles them to reimbursement if and when they pay the tax). But the two producers regarded the filing as merely a protective step and (since they have not paid the tax to the State) they have not at any time invoiced Jupiter to pay the increase. Instead, the producers continued to invoice their buyer at the old rate of 18.9333 cents, not the new rate of 20.4333 cents called for by their rate filing which the Commission permitted to become effective December 1958.

In the same month of December 1958, Jupiter (then Commonwealth), assuming their seller (K-M-P) would be charging them according to their rate filing of a week before, quite justifiably filed a corresponding rate increase as a supplement to their Rate Schedule No. 8, which increased their price to Tennessee to 22.8333 cents. Note that the gross amount of 22.8333 cents is the sum of three charges, 18.9333 cents as Jupiter's cost of gas, 2.4 cents for Jupiter's transportation margin and 1.5 cents for the expected tax reimbursement. Their invoices to Tennessee carried out the rate filing.

Thus the trouble arises—Jupiter for seven years has been collecting this 1½-cent tax item from Tennessee, to the amount of about $300,000 per year, but has never actually been called upon to pay it over to the producer for whom it was collected, nor has the producer been called upon to pay it to the State. If the entire collection had been held in escrow, or set aside in a trust account in the bank, perhaps no question would now arise, at least in this case. Instead the amount has been taken up as revenue and used in operations and perhaps dividends.

There is a tax item set up as a reserve in Jupiter's books in the amount of $516,374 which Jupiter's brief, page 79 now suggests is solely attributable to the years before December 1958, when their sale was not to Tennessee but to the Canadian concern, Niagara Gas. As explained in Chapter IV above, the Commission at that time regarded the sale to Canada as nonjurisdictional and in its recent certificate decision[25] declined to reconsider or readjust that conclusion. Jupiter now claims the total amount actually involved, meaning the collection between December 1, 1958 and December 31, 1964, is $1,838,067. But its own annual report for 1964, in evidence as Ex. J–19 contains their auditor's footnotes stating, with respect to the Louisiana tax:

> The Jupiter Corporation (since March 1, 1962) and Commonwealth Oil Company prior thereto have collected certain Louisiana gas gathering and severance taxes on gas sold which was purchased and gathered from Gas wells located in the Gulf of Mexico in an area claimed by both Louisiana and the United States. In addition to the $516,374 shown in the consolidated balance sheet as provision for gas gathering and severance taxes, Jupiter and Commonwealth have collected since 1958, $2,769,309 of such taxes which, on the basis of the position taken by the Internal Revenue Service on examination of Commonwealth's tax returns, have been recorded as income in the tax returns and accounts of the companies. The ultimate liability, if any, for the amounts so collected (including the amounts taken into income) cannot be determined until the dispute between Louisiana and the United States is settled. The amount of such taxes included in revenue in 1964 is $294,555. Counsel for Jupiter is of the opinion that the ultimate liability for the taxes collected will not exceed the provision of $516,374.

The net result is that some amount in the neighborhood of $2 to $3 million has been collected by Commonwealth—Jupiter from its pipeline customer, Tennessee, by Tennessee from its distributor customers, and by them from their customers, the consumers. Yet, not one dollar of this amount has been paid over to the producers or to the State of Louisiana, or has been claimed or levied by the State of Louisiana, or billed by the producers to Jupiter; nor has it been set aside in escrow in recognition of the trust so obviously resulting. For this patently unsavory situation, it is difficult indeed to find any participant who has not his share of blame.

First, the State of Louisiana appears (K–M–P Brief, p. 11) to rely upon some sort of understanding with the Federal officials that, upon ultimate resolution of their entire litigation, the taxes would be paid, should Louisiana prevail, to which Phillips has agreed. Second, the producers have contributed their share by filing here a formal rate increase they did not intend to charge and have not charged—this notwithstanding the plain language of the law (Sec. 4) that every natural gas company shall file with the Commission schedules showing "all rates," which surely means the rates actually being charged. Instead their filing of December 24, 1958, was accepted in good faith by the Commission and given the number, Supplement No. 8, showing in plain figures the former price as stated, the tax reimbursement of 1.5 cents, and the total price of 20.43333 cents. (Phillips' filing of December 22 is Supplement No. 11.) Now, seven years later, it develops the filing does not reflect the charge in effect at all. The only explanation is the weak and ineffective one that Kerr-

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[25] Opinion No. 470, August 11, 1965, issuing a certificate to K–M–P and a "temporary" to Jupiter, both at slightly lower prices, see Chapters IV and VIII above. On December 7, 1965, Jupiter filed for review of that opinion in the Court of Appeals for the Seventh Circuit.

McGee filed to protect themselves against the imposition of the tax, but deemed it unwise to collect the reimbursement from Jupiter. Why it was also deemed unwise to correct the rate filing here or otherwise disclose the facts to the Commission is not explained. What is more, all of the reimbursement contracts, from the producer on down the line, refer to the tax "being levied" as the basis for reimbursement, and the plain fact is not a dollar of tax in this matter has actually been levied at any time since December 1958.

Jupiter's filing of the 1½-cent rate increase in December 1958 was an appropriate reaction to the same increase filed by their suppliers, but that does not explain the continuation of the filing and the charge thereunder to Tennessee after it developed that K-M-P were not in fact collecting the amount from Jupiter. The suggestion that some sort of oral tender was made by Jupiter to Phillips and Kerr-McGee is not supported by recorded evidence. The only explanation for the continued collection is the need to protect their interest against the possibility that the producers might sometime be called upon to pay, and therefore to collect over the amount, both currently and retroactively. But this does not explain why there could not have been entire reliance on their action over against Tennessee for reimbursement for any such payment, if and when required to be made by them. Neither is there any significant explanation why the amount has been taken up as corporate income instead of being set aside as a liability and reserve.

It is equally unclear why Tennessee has consistently paid this amount unquestioningly ever since it was first billed in 1959. Their witness tells us they buy from several hundred producers in the area and are paying the tax to some of them on the understanding the producers are indeed paying it over to the State of Louisiana. Jupiter's is said to be the only case of its kind among Tennessee's gas sources in Louisiana (7T1165), in view of which Tennessee's readiness to pay the tax item included in each monthly invoice without verifying that it was a real *reimbursement* can hardly be understood in light of the specific language of Jupiter's rate filing, Supplement No. 5 to its Rate Schedule No. 8. What is more, there is certainly no agreement here with Tennessee's caveat at page 11 of their brief to the effect that if and when this $2 or $3 million is refunded to them, Tennessee is not obliged to remit the amount in specie to its customers. Their rate settlement agreement of 1962 has nothing to do with it. The fact is that the entire collection, at each successive step by the distributors from the consumers, by Tennessee from the distributors, and by Jupiter from Tennessee, was made for the special purpose of paying the tax to Louisiana and upon the implied representation it was needed for that purpose. With that purpose failing, there arises, under ordinary principles, a constructive trust,[26] unrelated to and unaffected by any other revenues or expenses, profits or losses in the respective gas sales, and as and when any refunds are achieved they will be for payment over accordingly.

Now that the entire question has been brought out at the hearing, the Staff's brief has joined in the recommendation that the increase under the supplement just mentioned should cease to be collected and that the amount heretofore collected should be set aside in an escrow account.

Finally, Jupiter cautions that this is a Section 5 rate investigation which means that it may not encompass a retroactive reparation order. However, that does not affect an accounting order by the Commission, made under Sections 4, 5, 8, 16 or other provisions of the law, and requiring that the funds collected be truly shown on the books for what they are, namely, a reserve liability.

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[26] Restatement, Restitution, Ch. 9.

The order also amends Supplement No. 5 to Jupiter's Rate Schedule No. 8 so as to cancel that increase and cease its collection henceforth. The point is there is now only the faintest, most far-fetched basis for apprehension of any tax liability at all—the Supreme Court has since held in so many words: "We decide now only that Louisiana is entitled to submerged-land rights to a distance no greater than three geographical miles from its coastlines, wherever those lines may ultimately be shown to be."[27] While the Court has retained jurisdiction to settle any dispute as to the actual location of the coast, see its order of December 13, 1965 in No. 9 original, there has not been explained to this record why any possibility is foreseen of a Louisiana tax here since all the wells are about nine miles offshore.

In any event, if and when it ever comes to pass that Louisiana should assess its tax and attempt to levy it upon the producers, it will be time enough to reconsider what reimbursements are thereafter in order. As to the past years, dating back to 1958, any attempt to levy the state tax up to eight years or more retroactively would obviously be subject to the most serious question of validity as an undue burden on interstate commerce. As of right now, the producers have not paid it or been called upon to pay it, and no reimbursement is called for, due, or required.

Finally, if there be any problem or lack of agreement in any of these connections, it is called to attention that this entire sale is still under a temporary certificate, see Opinion No. 470 cited above, and the Commission is free, in deciding whether *any* permanent certificate is here *required* in the public interest, to attach an appropriate condition equally required in the public interest. *United Gas Improvement Co.* v. *Callery Properties, Inc.* (December 7, 1965), 382 U.S. 223.

XI

TENNESSEE'S CERTIFICATE APPLICATION

It remains only to pass upon Tennessee's application in CP65-58 for a certificate to license their proposed lease of Jupiter's lines and facilities, which was consolidated with the Section 5 investigation by the Commission's order of October 30, 1964. Parenthetically, both Tennessee and Jupiter object mightily to the consolidation, but on no discernible ground except that it is a very unusual practice, which is something short of a showing of illegality.

Tennessee's proposal contemplates leasing the facilities outright for a rental fee of $100,000 per month, less operation and maintenance expenses incurred. Since Jupiter would then be eliminated from the operation, the proposal also is for Tennessee to take over Jupiter's contract with the two producers, accept delivery and title to the gas as the respective offshore platforms, pay to K-M-P Jupiter's present purchase cost, and pay to Pure the net rate settlement price of 16.75 cents, eliminating the 3.4 cents reimbursement for transportation charges now being paid by Pure to Jupiter. Jupiter has agreed to the tentative arrangements and endorses the application. K-M-P take no position; Pure is not here.

The first advantage cited by Tennessee in proof of the public convenience and necessity of the new arrangement is the immediate savings of $200,000 per year, since their cost will be $1,200,000 per year instead of the amounts now being paid out, as explained in Chapter VII. Realizing the obvious and invidious comparison between that cost, $1,200,000, and the cost of service as developed in the staff's evidence filed six months ahead of this application, Tennessee cites a number of other advantages, *i.e.*—

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[27] *U.S.* v. *Louisiana* (1960) 363 U.S. 1, 79, *cf.* the *Submerged Lands Act of 1953*, 43 U.S.C. 1301.

(a) The larger reductions proposed by the staff take place when and if its proposed order under Section 5 becomes final, whereas the $200,000 per year savings becomes effective immediately upon consummation of the arrangement with the Commission's approval of the certificate.

(b) There is available an unused capacity in the lines amounting to 43,000 Mcf per day which Tennessee could use as lessee; provided, however, some one discovers, develops, and produces the new gas to make use of that potential.

(c) There are operating advantages in balancing their purchases from the producers without considering intermediate commitments to Jupiter.

(d) In later years, after 1974, Tennessee as lessee will be in a better position to renew the purchase contract with K–M–P.

Advantage (a) is now mooted with the consolidation. The other three advantages are useful and significant and would go to establish the law's standard, "public convenience and necessity" if the remaining condition or circumstances, namely the price, equally meet that standard. It is the staff's conclusion that the excessive price far outweighs the advantages, which is plainly correct. Recalling the Supreme Court's enjoinder in CATCO that the Commission's certificate function must exercise a responsible reaction to the price, and since the operating advantages cited by Tennessee are the sort of thing that should appear in any case even at a reasonable price, it would be hard to imagine how the price proposed could be thought to justify the Commission's approval of a lease of facilities at a cost roughly four times the amount that has been concluded to be the fair overall price for their service.

There was some suggestion that the certificate should issue nevertheless, but on condition reducing the price for rental to equal the cost of service concluded upon. Two difficulties arise which would first want to be resolved—Jupiter has announced that a decision in their case limiting them to the cost of service would be so drastic as possibly to require the liquidation of the entire enterprise, hence it is not clear that a lease would be satisfactory or in the public interest with the lessor so minded. Secondly, it was testified that at various times three of the prominent stockholders of the original organization, Marine, were top officials of Tennessee, the proposed lessee, although it was believed they were not stockholders at the time Tennessee's contracts were made with Pure. Further, it was the understanding their shares have since been disposed of. Accordingly, any resumption of the lease proposal would require some appropriate certification on both points, *i.e.*, (a) that the lessor is in business and expects to continue, and (b) that there is no interlocking ownership of the sort stated and the arrangement proposed can be approved as indeed an arm's length transaction.

Accordingly, it is the conclusion that the lease as proposed does not meet the standards required by the law and that the application for the certificate must be denied.

XII

FINDINGS AND ORDER

Based on the evidence herein it is specifically found that:

(1) Jupiter is engaged in the transportation of natural gas in interstate commerce for The Pure Oil Company in the Rollover Field, subject to the jurisdiction of the Commission under the Natural Gas Act.

(2) Phillips-Kerr-McGee make a sale of natural gas in the Rollover Field to Jupiter in interstate commerce for resale, and Jupiter makes a sale of such gas to Tennessee in interstate commerce for resale, subject to the jurisdiction of the Commission under the Natural Gas Act.

(3) Jupiter's transportation of gas in the Rollover Field and the performance of related services does not constitute a gathering service and is not exempt from the Commission's jurisdiction under the Natural Gas Act.

(4) To the extent that Jupiter performs any gathering at all in the Rollover Field it is completed at Pure's Platform "A" and Phillips-Kerr-McGee's Platform "A," and such gathering does not exempt Jupiter's Rollover Field operations from the Commission's jurisdiction.

(5) Jupiter's current contractual charges for the transportation of gas in the Rollover Field and for the sale of gas to Tennessee are unjust and unreasonable.

(6) The just and reasonable annual cost of service for the transportation of gas by Jupiter in the Rollover Field is $334,859, and the respective rates should be adjusted pro rata within that total.

(7) Jupiter should cease collection from Tennessee of the 1.5 cents per Mcf severance tax reimbursement.

(8) Jupiter should place in an escrow account the amounts accumulated by Commonwealth and Jupiter representing the 1.5 cents per Mcf tax reimbursement, since November 5, 1958, subject to refund if the State of Louisiana severance tax is declared inapplicable.

(9) Jupiter's motion to dismiss the proceedings should be denied.

(10) The issuance of a certificate of public convenience and necessity to Tennessee in Docket No. CP65-58 is not in the public interest and Tennessee's certificate application should be denied.

ACCORDINGLY, *It is ordered*, subject to review by the Commission, that:

(A) From and after the effective date of this order, the total charge by Jupiter for its transportation service for The Pure Oil Company under FPC Rate Schedule No. 7 and for the services therein described may not for any month exceed the sum of $17,167.08, except that the invoice for December of each year may provide for any adjustment needed in that calendar year resulting from an annual limitation in the amount of $206,005 for such transportation.

(B) From and after the effective date of this order the total rates and charges made by Jupiter to the Tennessee Gas Transmission Company for the sale of gas under Jupiter's FPC Rate Schedule No. 8 may not, for any month, exceed the sum of the following:

(1) The cost of gas for that month purchased for resale to Tennessee by Jupiter under Kerr-McGee's FPC Rate Schedule No. 56 and under Phillips Petroleum Company's FPC Rate Schedule No. 329 at rates lawfully in effect for the sale of gas to Jupiter by the two producers, respectively, plus

(2) The flat monthly sum of $10,737.83, except that the invoice for December of each year may provide for any adjustment needed in that calendar year resulting from an annual limitation in the amount of $128,854 in its total selling price (less the total cost of purchased gas in that calendar year).

(C) From and after the effective date of this order Jupiter shall no longer continue to invoice and charge Tennessee, its buyer under Rate Schedule No. 8, the 1.5 cents tax "reimbursement" charge referred to in Supplement No. 5 to Jupiter's Rate Schedule No. 8, but this is without prejudice to any new filing that may hereafter be made to reflect any change hereafter in the status of the Louisiana severance tax or in Jupiter's reimbursement obligation to the two producers.

(D) Upon the effective date of this order, Jupiter shall journalize and give full effect to an accounting entry in its corporate books of account charging the retained earnings account and crediting an appropriate reserve entitled "Provision for Reimbursement of Louisiana Severance Tax" in the entire amount of the tax reimbursement portion of its sale price which Jupiter has collected since November 5, 1958, under Supplement No. 5 to its Rate Schedule No. 8, and shall furnish to the Commission full report of such action under oath, showing the basis for the computation of the amount of the entry, subject to the further order of the Commission.

(E) For the reasons stated severally herein, there is hereby denied Jupiter's motion to dismiss the proceeding and terminate the investigation as filed on May 3, 1965, 2T286.

(F) The application of Tennessee in CP65-58 for a certificate of convenience and necessity licensing the leasing and operation of Jupiter's lines and plant is denied, without prejudice to its resubmission in proper terms.

WILLIAM L. ELLIS,
Presiding Examiner.

APPENDIX

Cost of Service Revision to Reflect Depreciation on Recoverable Gas Reserves Basis

The Staff's cost-of-service study (Ex. S-1) for Jupiter's transportation function (*i.e.*, excluding cost of purchased gas), allowing return at 6½%, develops an annual cost of $274,259, on the basis that a net plant of $664,508 remains after a depreciation reserve of $929,378, that being the "per books" figure resulting from the accelerated depreciation allowable under the Internal Revenue Code. Adjustment of this cost of service to reflect a more normal reserve for depreciation as related to plant in service is as follows:

1. Adjusted Net Plant:

	Per examiner	Staff Exhibit S-1
Average gross plant, 1962	$1,593,886	$1,593,886
Depreciation reserve (Note A)	431,624	929,378
Net transportation plant account	1,162,262	664,508
Allocation of net general plant	10,868	10,868
Adjusted average net plant	1,173,130	675,376
Working capital		
Total transportation rate base	1,173,130	675,376
Return at 6½%	76,253	43,899

Note A: When Jupiter bought up the Commonwealth-Marine properties at the end of 1961, it was on the basis of a study showing that the gas transportation function in the Rollover (Louisiana offshore) field had total recoverable gas reserves of 1,337,419 MMCF, of which 362,133 MMCF (or 27.08%) had been recovered by December 1, 1961 (6T999). Computing depreciation in that proportion for 1962, there results a reserve of $431,624, or less than half the amount accrued "per books."

By way of verification, if there were to be found applicable, a rather normal pipeline service life of 33 years (3.03% annual rate), and a depreciation reserve were computed on the customary straightline basis (ignoring salvage), the accumulated reserve as of January 1, 1963, after nine years service, comes close to the same amount, *i.e.*, $434,696.

2. Income Tax Adjustment on Allowable Return:

Increasing the net return from $43,899 to $76,253 requires a corresponding change in the income tax allowance, as follows:

	Examiner	Staff Exhibit S-1
Gross income from return allowance	$76, 253	$43, 899
Expense deductions for taxable net income:		
Allocation of interest expense (Note B)	4, 760	3, 006
Statutory rate adjustment	13, 542	13, 542
Total deductions	18, 302	16, 548
Taxable income base	57, 951	27, 351
Federal income tax on above base	53, 493	25, 247

Note B: The increase in the depreciated net plant in transportation service (par. 1 above) results in a small increase in the allocation of general firm interest expense and reduces to that extent the taxable income base.

3. Cost of Service as Adjusted:

Total cost of service per Staff Exhibit S-1		$4, 146, 911
Less cost of purchased gas		3, 872, 652
Staff's net cost of service for transportation (S-2)		274, 259
Return allowed in par. 1 above	$76, 253	
Return allowed in Staff Exhibit S-1	43, 899	32, 354
Income tax allowance in par. 2 above:	53, 493	
Income tax allowed in Staff Exhibit S-1	25, 247	28, 246
New transportation cost of service as adjusted by Examiner		334, 859

Cost applied to 1962 volumes: $334,859÷52,995,852 Mcf=0.632¢/Mcf (compared with 0.518¢ in Staff Exhibit S-2, Sch. 4).

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. RP66-14

ORDER APPROVING SETTLEMENT, ACCEPTING REVISED TARIFF SHEETS FOR FILING AND TERMINATING PROCEEDING

(Issued June 28, 1966)

Montana-Dakota Utilities Co. (Montana-Dakota), on June 13, 1966, submitted for filing a proposed settlement agreement in this proceeding, together with a motion that the interim decision procedure be dispensed with herein and that the attached tariff sheets be allowed to take effect as of June 15, 1966.

The proposed settlement provides for a rate of 29¢ per Mcf for sales of natural gas on a firm basis and a rate of 26¢ per Mcf for interruptible sales. Additionally, the company agrees that it will not file for any rate increase for a period of 3 years from the effective date of the proposed rate schedule.

This proceeding was initiated by a tariff filing made by Montana-Dakota on October 28, 1965, wherein it proposed: (1) an increase in rates for firm service for entire requirements and partial requirements customers from 22¢ per Mcf to 41.5¢ per Mcf; (2) initiation of an interruptible service under a rate schedule providing for a rate of 32.5¢ per Mcf; and (3) elimination of its existing specific contractual form of rate schedules and substitution of the tariff form of rate schedule. Montana Dakota requested that its proposed tariff filing be made effective as of December 15, 1965.

By order issued December 14, 1965, the Commission suspended the aforementioned filing until May 15, 1966.[1] That order also prescribed the dates for filing of testimony and exhibits and for convening of a prehearing conference thereon on May 10, 1966. In the interim, discussions were initiated among the parties to the proceeding, looking toward resolution of the issues and settlement. On June 9, 1966, the aforementioned settlement agreement was made a matter of record at a pre-hearing conference before the presiding examiner, and the conference was recessed to reconvene on June 16, 1966, to afford the parties an opportunity to respond to that settlement proposal.

On June 10, 1966, the Public Service Commission of Wyoming filed a Notice of Withdrawal of its intervention, conditioned upon the Commission's approval of the settlement agreement. On June 14, 1966, the Wyoming Gas Company, an intervener, advised that it joined in Montana-Dakota's proposal, subject to concurrence therein by Magnet Cove Barium Corporation, its largest industrial customer and an intervener in the proceeding. The concurrence of that industrial customer was made a matter of record at the reconvened prehearing conference on June 16, 1966.

The Commission staff on May 16, 1966, served its testimony and exhibits in this proceeding, wherein it proposed a rate of 30¢ per Mcf for firm service and 26¢ per Mcf for interruptible service. Accordingly, the Commission staff concurs in the proposed settlement.

The Commission finds:

(1) The settlement of this proceeding on the basis of the proposal herein summarized and as more fully set forth on the record as reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter provided.

(2) The tariff sheets submitted by Montana-Dakota should be allowed to become effective as of June 15, 1966.

The Commission orders:

(A) The settlement of this proceeding on the basis of the agreement set forth on the record and in the motion filed by Montana-Dakota on June 13, 1966, hereby is approved and accepted.

(B) The tariff sheets submitted for filing by Montana-Dakota with its motion: Original Sheets Nos. 5C, 5D, 5E, 17B, 20B; First Revised Sheets Nos. 5, 5A, 5B, 6, 17, 17A, 18, 20 and 20A; and Second Revised Sheets Nos. 1 and 4 to Montana Dakota's FPC Gas Tariff, Original Volume No. 4, are accepted for filing, to be effective as of June 15, 1966.

(C) The proceeding in this docket hereby is terminated.

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[1] The increased rates proposed by Montana-Dakota in its October 28, 1965 filing were not made effective or collected by the company.

CITY AND COUNTY OF DENVER, COLORADO, PROJECT NO. 2204

ORDER ADOPTING PRESIDING EXAMINER'S INITIAL DECISION

(Issued June 29, 1966)*

Syllabus

1. Where there is no difference with respect to facts, and parties and Examiner agree, matter may be submitted for decision on stipulated set of facts without taking testimony. P. 1137.
2. Ultimate responsibility for issuance of a license which would assure operation of hydroelectric project in best interest of public has been delegated by Congress to the Commission. P. 1140.
3. Section 10(a) of the Federal Power Act confers authority on Commission to impose such license terms and conditions as in its judgment best adapts project for "public beneficial uses," including recreational and fish and wildlife conservation. P. 1141.
4. Argument that failure to delete Article 25 and substitute fish and wildlife agreement would subject licensee to dual regulation by Federal Power Commission and Interior Department is rejected—clearly licensee's primary responsibility, insofar as project operation is concerned, is to the Commission. P. 1141.
5. Special conditions are inserted in license to assure maintenance of minimum fishery pool and release of sufficient water to support fish habitat below dam, not subject to contingencies of fish and wildlife agreement. P. 1141.
6. Inclusion of Article 25 and special conditions will enable Commission to discharge its duty under Section 10(a) of the Act by retaining authority sufficient to protect fishery resource. P. 1142.
7. Article 25 may never be invoked; imposes no present obligation on licensee beyond that contained in license as originally issued; and no additional obligation may be imposed without notice and opportunity for hearing. P. 1142.
8. Whether power generated at Williams Fork Project is incidental is not germane—Section 23(b) of the Act requires a municipality, among others, to obtain a license where hydroelectric power is to be developed on, and by utilization of, lands of the United States. P. 1143.
9. Obvious purpose of Section 10(c) of the Act and Article 14 is to insure operation of project in best interests of the public. P. 1143.
10. Municipalities are specifically exempted from recapture provisions of Section 14 of the Federal Power Act. P. 1144.
11. Section 8 of the Act specifically delegates to Commission right to require that no voluntary transfer of license or rights thereunder be made without Commission's written approval. P. 1145.
12. Under Article 30 Denver has right and duty to deny public access to dam and power plant, or to any "precipitous or dangerous" roads, should public interest require. P. 1146.
13. Reasonable fee may be charged for use by public of recreational facilities furnished or constructed by Licensee or its concessionaires. P. 1147.

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*Initial decision appears on p 1136.

14. Upon rehearing, Commission *amends* prior order issuing license under Section 4(e) of the Federal Power Act.

Glenn G. Saunders and *Willard S. Snyder* for City and County of Denver, Colorado.

David A. Watts for the Secretary of the Interior.

Robert Delaney for Middle Park Water Conservancy District.

John D. Lane and *William J. Madden* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

This proceeding arises from an application for license filed by the City and County of Denver, Colorado for certain project works constructed and to be constructed on the Williams River, a tributary of the Colorado River. By order of January 31, 1963, the Commission issued a license to Denver, 29 FPC 192. Denver and the Middle Park Water Conservancy District have filed applications for rehearing.

The issues in the proceeding were principally concerned with conditions in the license relating to the operation of the project in connection with other projects on tributaries of the Upper Colorado River and in connection with conservation of fishery resources.

The decision issued March 17, 1966, by Presiding Examiner Martin E. Rendelman discusses the facts at length, rejects certain of the arguments made by the parties, accepts others and amends the license in certain particulars.

No exceptions have been filed to the examiner's initial decision by any of the parties to these proceedings. We have examined the evidence of record, the briefs filed and the examiner's decision, and we are of the opinion that the examiner's decision should be adopted as our order.

The Commission orders:

The initial decision of the presiding examiner issued herein on March 17, 1966, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION
OF THE PRESIDING EXAMINER ON APPLICATION FOR AMENDMENT OF THE LICENSE

(Issued March 17, 1966)

RENDELMAN, *Presiding Examiner:* The original application for a license under the Federal Power Act for certain project works constructed and to be constructed on the Williams River, also known as the Williams Fork River in Colorado, designated as Project No. 2204, was filed by the City and County of Denver (Denver) on May 11, 1956, and supplemented at various times thereafter.

As reported in the Order Issuing License (Major) dated January 31, 1963:[1]

> The original dam and water supply reservoir on Williams Fork River were completed and put into use during 1941, as primarily a municipal water supply system, under a permit issued by the Bureau of Land Management of the Department of the Interior. In its application, Applicant seeks a license to authorize the then existing project works, and future

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[1] 29 FPC 192.

> enlargement of the existing dam and installation of a 3,000 kilowatt generating unit in the reservoir on Williams Fork River. * * *

By order dated December 5, 1956, the Commission approved the application to intervene of the Middle Park Water Conservancy District of Granby, Grand County, Colorado (Middle Park) "limited to matters affecting asserted rights and interests specifically set forth in the petition for leave to intervene".

By letter dated December 27, 1956, Denver's Board of Water Commissioners was advised by the Federal Power Commission that no objection would be interposed to its proposal to award contracts for electrical equipment and proceed with construction at Denver's risk. It appears that the Project was thereafter completed and placed in operation on July 25, 1959.

By order dated January 31, 1963, the Commission issued a license to Denver (29 FPC 192) subject to the terms and conditions set forth in Form L-2, December 15, 1953 (17 FPC 62) with certain exceptions such as the omission of Articles 20 and 21 dealing, respectively, with the determination of the actual legitimate original cost of the project and the establishment of an amortization reserve account. These standard articles derive from Sections 4(b) and 10(d) of the Federal Power Act and are not applicable to State or Municipally-owned projects (Act of August 15, 1953, 67 Stat. 587, 16 U.S.C. 828). In addition, the license was made subject to certain special conditions, as hereinafter discussed, specifically applicable to this project.

On February 27, 1963, Denver filed an application for a rehearing with respect to several conditions of the license including those concerning fish and wildlife resources. On February 28, 1963, Middle Park also applied for a rehearing based on its claim of alleged water rights on the Williams River upstream from Project No. 2204, and its allegation that operation of Project No. 2204 is in violation of the Federal Power Act.

On March 4, 1963, the Secretary of the Interior filed a petition to intervene and a motion to set aside the license order. Additionally, on the representation that negotiations were in progress with reference to conservation matters, it was requested that all proceedings be held in abeyance until June 1, 1964. The continuance was granted and the resulting agreement as set forth in a letter from Denver dated September 30, 1964, and in letters from the Secretary of the Interior dated October 12 and 29, 1964, was submitted to the Commission. By order dated February 9, 1965, the Commission granted the petition to intervene filed by the Secretary of the Interior limited to matters affecting fish and wildlife resources, and set the hearing date for April 13, 1965. On the further representation that Denver and Middle Park were also attempting to reach agreement, the parties on April 2, 1965, filed a joint motion requesting that a prehearing conference be held no earlier than July of 1965, and that a hearing date thereafter be set by the Presiding Examiner. By order dated April 12, 1965, the Commission granted the continuance and directed that the prehearing conference be convened on July 20, 1965.

At such prehearing conference attended by the applicant, the intervenors and Commission Staff Counsel, Denver advised that it had withdrawn its objection to Article 29(ii) of the license dealing with annual charges for the use, etc., of United States lands and Article 31 dealing with the filing of the Recreational Use Plan. It was then further agreed by the parties, with the concurrence of the Presiding Examiner, that since there were no differences with respect to the facts concerned herein, the matter could be submitted for decision on a stipulated set of facts without the taking of testimony, as supplemented by the record of the prehearing conference and the briefs to be submitted by the parties. The stipulation of facts thereafter submitted is attached hereto as Appendix A.

The Williams Fork River is a tributary of the Colorado River in the region of the villages of Hot Sulphur Springs and Parshall in Grand County, Colorado and affects lands of the United States. It is the middle river of three rivers which flow westerly into the Colorado River from the Continental Divide. Upstream is the Fraser River from which Denver diverts water to the eastern slope by means of the Moffat Tunnel. Downstream is the Blue River supplying the Dillon Reservoir from which water is similarily diverted for Denver's use through the Roberts Tunnel. (Appendix B)

The Williams Fork Project was constructed for, and is intended to serve several purposes including irrigation, power generation, fish and wildlife conservation, recreation, and replacement storage for municipal water supply. By means of the Jones Pass Tunnel, Denver diverts water from the Williams Fork River to the eastern slope of the Continental Divide for municipal water supply use in the Denver metropolitan area. Storage from the Williams Fork Project does not reach the eastern slope but enables Denver to replace water diverted through the Continental Divide tunnels during periods when such diversion would conflict with downstream senior water rights on the Colorado River. The project also enables Denver to store water on the eastern slope of the Continental Divide, City and County of Denver, 10 FPC 766 (February 27, 1951) and 10 FPC 1411 (October 2, 1951), Project No. 2035. Water is also exchanged by means of this project with the Bureau of Reclamation, which has a replacement reservoir on the Blue River, the downstream tributary of the Colorado River. In accordance with a federal court consent decree, *United States of America* v. *Northern Colorado Water Conservancy District*, Civil No. 2782, 5016, 5017, Denver, *inter alia*, is required to replace power that the Bureau of Reclamation would have generated on the Blue River at its Green Mountain Project had Denver not diverted the water required for operation of the Williams Fork Project.

The principle point of contention among the parties is Article 25[2] of the license which concerns fish conservation facilities and structures and reads as follows:

> The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such fishways including fish traps, or other fish handling facilities or fish protective devices and supporting facilities for artificial propogation and comply with such reasonable modifications of the project structures, and operation in the interest of fish life as may be prescribed hereafter by the Federal Power Commission upon its own motion or upon the recommendations of the Secretary of the Interior, or the Colorado Department of Fish and Game, after notice and opportunity for hearing and upon a finding based on substantial evidence that modifications are necessary and desirable, and consistent with the provisions of the Act.

Denver and Interior urge the deletion of Article 25 and that the fish and wildlife agreement (Appendix C) between them be substituted. Denver contends that the Fish and Wildlife Service of the Department of Interior is the agency of the Government primarily charged with fish and wildlife conservation, and that when detailed provisions for fish and wildlife conservation specifically applicable to the particular project have been negotiated between the operator of the project and the agency charged with the responsibility therefor, the Federal Power Commission should not superimpose thereon its own standard general provisions which are of general application and may in large measure be entirely inappropriate. Moreover, argues Denver, it should not be put in a position where it must deal with two different Government agencies under different terms with regard to the same subject matter.

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[2] The Commission's order of January 31, 1963, 29 FPC 192 subjected the license issued therein to the terms and conditions set forth in Form L–2, December 15, 1953 (17 FPC 62). Article 25 of the instant license with some language changes is now Standard Article 10 Form L–2 (31 FPC 528, 530) (1964).

Interior initially concurs in the position taken by Denver but concludes with the caveat that "in retrospect it is quite apparent that the exact language of the agreement cannot be incorporated into the license." Other suggested provisions are then presented for inclusion in the license in lieu of Article 25.

The fish and wildlife agreement between Denver and Interior provides in Section 1 that Denver will maintain a minimum fishery pool of 1,000 acre feet in the Williams Fork reservoir which may be drawn down from this level for the repair of project facilities or increased benefit to the fishery resource. Section 2 requires that Denver permit public access and use of the land and water areas of the project for public recreational projects including boating. These areas, however, may be closed or public use limited if such use will endanger health or life, or interfere with the efficient operation of the reservoir.

Section 3 requires Denver to designate certain areas around the reservoir for camping, parking and related uses by the public pursuant to agreement with the State of Colorado Game, Fish and Park Commission for the operation and maintenance of these facilities.

Section 4a of the agreement provides that Denver will at all times release from the reservoir not less than 15 cfs of water, or inflow, whichever is less, except during an emergency or during repair of project facilities. The purpose of this section is the replacement of water diverted from the Blue and Fraser Rivers for municipal use in Denver, approximately 70 percent for replacement of the Blue River diversions and 20 percent for diversions from Fraser River. Replacement of the waters thus diverted is intended to satisfy the senior rights of downstream water users on the Williams Fork, Blue and Colorado Rivers and to replace the loss in generating power at Interior's Green Mountain Dam. Inasmuch as Denver has little if any diversion facilities at the head waters of the Williams Fork River, the required flow of "15 cfs or inflow whichever is less" would appear to be adequate for this purpose. Limitation of the release of reservoir inflow water for the benefit of the fishery when such inflow is less than 15 cfs is required to protect Denver against dry years when the demands for municipal water is heaviest.

Section 4b of the agreement requires Denver to continue to release through the dam 15 cfs during the irrigation season when downstream users having senior water rights divert water below the dam, in addition to the releases necessary to satisfy such senior water rights. However, should the inflow not be sufficient to meet the 15 cfs release schedule plus the water demands of irrigators with senior water rights, then only the inflow will then be passed through the dam for the benefit of the fishery resource. This section is then made subject to Section 4b(1) which requires that the Colorado Commission of Game, Fish and Parks obtain separate agreements with each of the downstream diverters guaranteeing that the water released, in addition to the water released for irrigation purposes, will not be diverted but will be passed for the benefit of the fishery resources. The operation of Section 4b is thus made contingent upon the procurement of these agreements.

Section 4b(2) permits discontinuance of the additional releases to maintain fishery habitat, as delineated in Section 4b, if it is found by officials of the State of Colorado that downstream users are in fact diverting such water.

Section 4c provides for consultation between the licensee and the Colorado Game, Fish and Parks Commission for a revision of the release schedule in the event the amount of water and storage in the Williams Fork Reservoir is insufficient to meet replacement requirements. It is further provided therein that "in the absence of agreement as to said revisions the matter shall be subject to determination under applicable law without regard to these conditions."

Commission Staff Counsel objects to the verbatim inclusion of the agreement in the license in lieu of Article 25 on the ground that "the terms of the agreement * * *, standing alone, are unclear and difficult to incorporate in the license." Staff's objections run mainly to the contingency contained in paragraph 4b(1) which conditions Denver's obligation to release the water necessary for fish preservation during the irrigation season, a quantity over and above that necessary to satisfy the senior rights and needs of downstream irrigators, upon the procurement of agreements by the Colorado Game, Fish and Park Commission with downstream users not to divert such water. Staff validly points out that the Colorado Commission is not a party to the Agreement and that this Commission therefore has no authority to require procurement of these agreements by the Colorado Commission. Thus if no agreements were to result, Denver, without regard for the Federal Power Commission, could discontinue releases of water for fish preservation during the irrigation season in the event of diversion of the extra water by irrigators below the dam.

Staff additionally calls attention to the fact that, despite the mandatory language in paragraph 4c which requires that the "Colorado Game, Fish and Parks Commission shall, upon notice, by the Licensee, consult with the licensee for the purpose of reviewing the aforesaid release schedule and making revisions thereon for the duration of said shortage," if such a shortage occurred there is no authority in this Commission to compel such consultation, or maintenance of the releases necessary for fish habitation during and after consultation, if no mutually satisfactory revision derived therefrom. The proviso in this section, that in the absence of agreement as to the revision of release schedules that "the matter shall be subject to determination under applicable law * * *", is furthermore much too vague and provides something less than a definitive solution to the problem. What is the applicable law? At what point is such law to be invoked? Must both parties consent before resort is made thereto? These and similar questions remain unanswered by the agreement.

It is undisputed, as argued by Denver, that the Fish and Wildlife Coordination Act (16 U.S.C.A. Sec. 662(a)) requires consultation with the United States Fish and Wildlife Service of the Department of Interior and the agency of the state exercising administration over wildlife resources prior to construction which would alter the natural course of a "stream or other body of water." However, the ultimate responsibility for the issuance of a license which would assure the operation of a hydroelectric project in the best interests of the public has been delegated by Congress to the Federal Power

Commission. Assuming, as suggested by Denver, that the fish and wildlife agreement is the recommendation resulting from the "consultation" required by Sec. 662(a), this Commission, in the absence of any cited authority making inclusion of such recommendation in the license mandatory, would be remiss in its duty to the public, if it unqualifiedly accepted such recommendation despite its cognizance, as related to the public interest, of the infirmities and defects contained therein.

This conclusion is, moreover, confirmed by Section 10(a) of the Federal Power Act, 41 Stat. 1068 (1920) as amended, 16 U.S.C. Section 803(a) (1964), which confers upon this Commission authority to incorporate into the license for a hydroelectric project such terms and conditions as in its judgment best adapt the project "for the public beneficial uses", including recreational uses and fish and wildlife conservation. *State of Iowa, et al.* v. *Federal Power Commission*, 178 F. 2d 421, 428 (CA8–1949); *Namekagon Hydro Company* v. *Federal Power Commission*, 216 F. 2d 509 (CA7–1954); *Pacific Power & Light Company, et al.* v. *Federal Power Commission*, 333 F. 2d 689 (CA9–1964); *State of California, et al.* v. *Federal Power Commission*, 345 F. 2d 917 (CA9–1965); *Department of Water Resources of the State of California, Project No. 2100*, 17 FPC 262 (1957); *Duke Power Company, Project No. 2232*, 20 FPC 360; *Turlock Irrigation District, Project No. 2299*, 31 FPC 510; and *Public Utility District No. 1, Skamania County, Washington, Project No. 2199*, 32 FPC 444. *Cf., Pacific Northwest Power Company, Project No. 2243*, 31 FPC 247.

As recently reiterated by the Court in *Northwest Paper Company* v. *Federal Power Commission*, 344 F. 2d 47, 51 (1965):

> * * * The various Acts of Congress forming the background for the Federal Water Power Act of 1920, as amended by the 1935 Act, are indicative not only of an intention to fully develop the water resources, and to protect the national interest, but of an intention to centralize the authority over such resources in one Government agency. * * *

Denver's argument that failure to delete standard Article 25 and substitute the fish and wildlife agreement would subject Denver to dual regulation is thus not well taken. From the authorities hereinabove cited it is clear that, as licensee of the instant project, Denver's primary responsibility insofar as operation of the project is concerned, is to the Federal Power Commission.

It is therefore found that the maintenance of a minimum fishery pool and the release of a quantity of water sufficient to support fish habitat below the dam, not subject to the contingencies of the fish and wildlife agreement, should be assured. Accordingly, in addition to Article 25, the following special conditions should be included in the license:

Article 32. The Licensee shall maintain a minimum fishery pool of 1,000 acre feet in Williams Fork Reservoir below which the reservoir shall not be drawn except under the following conditions:

(a) when such drawdown is necessary to make repairs to protect facilities, or

(b) when it is mutually agreed upon between the Licensee and the Colorado Department of Game, Fish and Parks that draining below this level is beneficial to fish management.

Article 33. For conservation of the fishery in the Williams Fork River below the project dam and integral powerhouse the Licensee shall release from Williams Fork Reservoir not less than 15 cfs of water on the inflow, whichever is less, at all times except during an emergency beyond the control of the Licensee, or as may be necessary during temporary periods of time involving maintenance or repairs on the water facilities involved.

Article 34. During the irrigation season, when downstream users are diverting water from the Williams Fork River below Williams Fork Dam pursuant to water rights senior to those of the Licensee, the Licensee shall pass not less than 15 cfs of water through said reservoir in addition to the water being diverted for use by these downstream rights. If the inflow into Williams Fork Reservoir is insufficient to provide these combined flows, only the inflow will be passed.

Article 35. The Commission reserves the right to require the Licensee to adjust the water releases to maintain fish habitat, provided for in Articles 33 and 34, upon petition by the Secretary of the Interior, the Colorado Game, Fish and Parks Commission or the Licensee, and after notice and opportunity for hearing.

That, as claimed by Denver, the type of structures referred to in Article 25 such as fishways and fishtraps, etc., may be unsuited to this particular project does not, in any case, defeat the purpose for which it is included. Section 10(a) of the Federal Power Act charges this Commission with, the duty of issuing licenses "best adapted * * * for beneficial public uses * * *". Inclusion of Article 25 and the proposed special conditions will enable the Commission to discharge that duty by retaining authority sufficient to protect the fishery resource.

It might also be pointed out that Article 25 may never be invoked and imposes no present obligation on Denver beyond that contained in the license as originally issued. Nor can any additional obligation be imposed without notice and opportunity for hearing "and upon a finding based on substantial evidence that modifications are necessary and desirable, and consistent with the provisions of the Act." *Portland General Electric Company* v. *Federal Power Commission*, 328 F. 2d 165, 175–176.

ADDITIONAL ARTICLE OF THE LICENSE TO WHICH EXCEPTION IS TAKEN

Denver requests deletion of standard Article 14,[3] Form L–2, 17 FPC 62, 65 (1953) from the license, claiming that its primary purpose is to provide, pursuant to rules and regulations prescribed by the Federal Power Commission, for the conservation and utilization of natural waters for power generation, whereas the primary purpose of the Williams Fork Project is to provide water for municipal purposes, the generation of power from this project being a merely incidental function. It is argued that Denver owns its own water works system controlled by its own Board of Water Commissioners, which Board has the responsibility of providing an adequate supply of water to the inhabitants of the City and County of Denver. Since Article 14 of the license, says Denver, vests control of the Williams Fork Project in the Federal Power

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[3] Article 14, Form L–2 (1953) is as follows: "The operations of the Licensee so far as they affect the use, storage, and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned."

Article 14 appears in the 1964 revision of Form L–2, without change in language, as Article 5. See 31 FPC 528, 529 (1964).

Commission which does not have that responsibility the assumption of such control therefore constitutes a taking of property without due process of law.

Whether the power generated at the Williams Fork Project is incidental, while debatable, is really not germane to the issue. The fact is that Section 23(b) of the Federal Power Act requires a municipality, among others, to obtain a license from the Federal Power Commission where hydroelectric power is to be developed on, and by utilization of, lands of the United States. In connection with such projects Section 10(c) of the Act delegates to this Commission the right to prescribe guidelines so that the project is operated with regard "for the protection of life, health, and property". It is by means of Article 14 of the license that the Commission retains the authority necessary to prescribe such rules, when and if necessary. Since the Commission has as yet prescribed no such rules or regulations Denver's protest is in any case premature and would seem to be directed more to the mandatory procurement of a license, and to the possible restrictions that could be imposed thereunder, than to Article 14 in and of itself.

Denver, moreover, cites no authority to support its view that the language of Article 14 is directed primarily to the conservation and utilization of "such waters for power purposes". The language of Article 14 makes it quite clear that in accordance with the duty delegated to the Commission by Section 10(c) of the Act, such regulations as may be promulgated are concerned, first, with operation of the project so as to protect life, health and property; second, to prevent the waste of water which could be used for power generation; and third, for "other beneficial public uses." The obvious purpose of Section 10(c) of the Act and of Article 14 is to insure operation of the project in the best interests of the public.

Denver's argument that the issuance of regulations by the Federal Power Commission governing the operation of this project would constitute a taking of property without due process of law is novel, if not convincing. The short answer is that the lands concerned "are lands of the United States". That, as pointed out by Denver, the Commission saw fit to exclude standard Article 14 from the license issued in connection with Denver's Gross Reservoir, Project No. 2035, does not in the absence of any showing that the situations are parallel compel such action here. There is nothing in the record in this case to indicate what the circumstances may have been in connection with Gross Reservoir which justified exclusion of Article 14 from the license. On the facts in this proceeding its retention appears warranted.

Standard Article 15,[4] as presently included by reference in the license, requires Denver to take no action which would restrict use of water from this project for fire suppression, or for sanitary or domestic purposes, by the United States or its agents. Denver proposes amendment of this article limiting its obligation to supply water for the suppression of "existing" fires only, and relieving it entirely from the requirement, to furnish water for sanitary and domestic purposes. Denver, while acknowledging the necessity for supplying water to combat existing fires, sees no purpose to the storage of water for general fire fighting purposes, or for permitting use of the water for sanitary or domestic uses by others when the reason for construction of the project in the first place was to augment the admittedly limited supply of water available for municipal use.

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[4] Article 15, Form L-2 (1953) is as follows: "The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license."

Article 15 appears in the 1964 revision of Form L-2 (31 FPC 528, 532), without substantial change, as Article 23.

Staff's objection to the suggested amendment runs not to the merits of the proposal but stresses the fact that under the authority contained in Section 10(g) of the Federal Power Act the Commission is empowered to include in the license "such other conditions not inconsistent with the provisions of this Act * * *".

It is hardly necessary for the Commission to demonstrate that as "guardian of the public domain", *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 16, 23, it has undeniable authority to include reasonable conditions in a project license, *United States* v. *City and County of San Francisco*, 310 U.S. 16. Insistence upon inclusion of Article 15 as is, and for no other reason, would constitute nothing more than an exercise of authority, a tactic which should be foreign to Commission policy. The courts have voiced disapproval of a Commission response to a valid argument urging deletion of an article in a license consisting of nothing more than an "assertion that the article is within its powers and in the public interest." *Rumford Falls Power Company* v. *Federal Power Commission*, 355 F. 2d 683 (CA1–1966). Accordingly, no valid objection to the merits of the suggested amendment having been offered, and it appearing that inclusion thereof in its original form could contribute substantially to frustration of the intended purpose of this project, it is found that Article 15 of the license should be amended to read as follows:

> *Article 15.* The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for suppression of an existing fire from any stream, conduit, or body of water, natural or artificial, used by Licensee in the operation of the project work covered by the license.

The first sentence of Article 23 of the license deals with the retention of project property. The second sentence then defines the responsibilities and obligations of the Licensee "in the event the project is taken over by the United States, upon termination of the license * * *". Denver correctly points out that municipalities are specifically exempted from the recapture provision of Section 14 of the Federal Power Act, 67 Stat. 587 (1953), 73 Stat. 271 (1959), 16 U.S.C. 828, and that such provision, included in the license, insofar as it may refer to Denver, is therefore inapplicable.

Without citation of any authority which supports its position, however, Denver also objects to inclusion of the initial sentence of Article 23 on the ground that it conflicts with Section 27 of the Federal Power Act, 16 U.S.C. 821, which reads as follows:

> SEC. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. [41 Stat. 1077; 16 U.S.C. 821]

It is clear that this section applies to a conflict between Federal and State law only with respect to the use of, and vested rights to, the water concerned in the project. It is not concerned with the transfer or disposition of other project property.

Section 8 of the Federal Power Act, moreover, specifically delegates to the Commission the right to require that "no voluntary transfer of any license or the rights thereunder granted, should be made without the written approval of the Commission; * * *". In view of the regulatory responsibility conferred by this section of the statute, it is essential that the Commission keep itself informed as to the status of project property. Inclusion of the first sentence of Article 23 in the license makes it possible for the Commission to perform this function.

Accordingly, Article 23 of the license will be modified by deletion of the second sentence. Similar action was taken by the Commission in the *Turlock Irrigation District and Modesto District, Project No. 2299*, 31 FPC 510, 525.

Articles 27 and 28[5] deal with the coordination of project operations electrically and hydraulically with other power systems, and with the installation of additional capacity, respectively, as the Commission may direct after notice and opportunity for hearing. Both Denver and Interior urge deletion of Articles 27 and 28 based on a showing that the operation of the Williams Fork Project is already coordinated both by court decree and by the existing working arrangement between Interior's Bureau of Reclamation and Denver.

As part of its overall domestic waterworks system Denver owns and operates the Dillon Reservoir on the headwaters of the Blue River. Located downstream on the same river is the Bureau of Reclamation's Green Mountain Reservoir, operated as part of its Colorado-Big Thompson Project. Competition for the waters of the Blue River led to extensive litigation, *United States v. Northern Colorado Water Conservancy District, et al.*, Civil Nos. 2782, 5016, 5017, U.S.D.C. Colorado (the Blue River Case), which resulted in a court decree which was incorporated by Congress in Section 11 of the Colorado River Storage Project Act of 1956, 70 Stat. 105 as amended 16 U.S.C., Section 620, 620-J 1964.

Stated simply, under the terms of the court decree Denver is permitted, subject to the consent of the Secretary of the Interior, which may not be unreasonably withheld, to replace by exchange, the waters diverted from the Blue River for storage in the Dillon Reservoir with waters stored elsewhere. The Williams Fork Project was constructed by Denver, *inter alia*, for this purpose. In practice the exchange from the Williams Fork Project is effected by replacement of the power which would have been generated at Interior's Green Mountain Reservoir by the waters diverted for Denver's Dillon Reservoir with power generated at Williams Fork and by replacement from the storage reservoir of the Williams Fork Project of the water needed at Green Mountain Reservoir to meet the needs of senior downstream water users. The court decree does not, however, specifically require that the replacement functions be accomplished by operation of the Williams Fork Project. Denver may replace the power loss at Green Mountain Reservoir, suffered by reason of the diversions at the Dillon Project, with either substitute power (*i.e.*, power generated elsewhere) or compensate the United States directly for the revenues lost by reason of the enforced reduction in generating capacity at Green Mountain. It is interesting to note that, in support of its position, Interior states that Denver contemplates no change in the existing method of performing the requiring replacement function from the Williams Fork Project. Denver, on the other hand, offers as further reason for deletion of Articles 27 and 28 the fact that it may at some future time desire to replace the water or power loss at Green Mountain from other sources because of changing conditions. Perhaps the coordination required by Article 27 with respect to Denver's and Interior's respective water and power projects should similarly have been required of their respective briefs. Both urge the same end but for inapposite reasons.

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[5] Articles 28 and 27 are special conditions which became standard Form L-2 articles in the revision of 1964. Article 28, without change, and Article 27, with certain language changes, are now, respectively, standard Articles 8 and 9, Form L-2, 31 FPC 528, 530 (1964).

Article 27 is as follows: "The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically with such other power systems and in such manner as the Commission may direct in the interests of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination."

Article 28 is as follows: "The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing."

In any case, the public interest requires the inclusion of Articles 27 and 28 in the license. There is no indication that the failure to delete Articles 27 and 28 would have any immediate effect on the existing methods for replacement of Green Mountain Reservoir water or power by means of which the terms and conditions of the court decree and Section 11 are carried out. Nor does it appear that the Commission, pursuant to the authority delegated in Articles 27 and 28, contemplates any change in the existing methods of operation. Moreover, as with Article 25 hereinbefore discussed, Articles 27 and 28 are "open end" conditions which impose no present obligation and specifically provide that the Commission may direct the action authorized therein only after notice and opportunity for hearing. Both Articles 27 and 28 preserve the right of the Commission to take such action only when the public interest so requires. Deletion of these specific conditions would constitute a waiver by the Commission of its responsibility and duty to insure operation of the project in the public interest.

Standard Article 19 reserves "to the appropriate department or agency of the United States, or of the state or county involved, the right to take over, maintain and supervise the use of any project road as a public road after construction of the project works is completed." Denver asks that there be added at the end thereof the phrase, "to the extent such action will not impair the control of the area for waterworks purposes of the Licensee." Denver perhaps overlooks Article 30 of the license which provides generally for free public access to the project area subject to the proviso "that the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health and property * * *". It is apparent that this language already reserves to Denver the right to do that which it seeks to accomplish by the proposed modification of Article 19. Under the above-quoted portion of Article 30 Denver would not only have the right, but would be under a duty, to deny public access to the dam and power plant, or to any of the "precipitous or dangerous" project roads, should the public interest so require.

With respect to Article 30[6] it is further requested that a sentence be added at the end thereof which would permit Denver to make a reasonable charge for use by the public of recreational facilities at the project sufficient to cover the cost of general maintenance, repair and replacement. Inasmuch as Denver is required under the terms of the existing license to maintain the project waters and adjacent project lands for public recreational purposes including hunting, fishing, and boating, it is appropriate that the public should pay a reasonable fee for the use thereof. To this extent Denver's request is reasonable and Article 30 will be modified by adding at the end thereof the following sentence:

> A reasonable fee may be charged for use by the public of recreational facilities furnished or constructed on the project by the Licensee or its concessionaires.

MIDDLE PARK WATER CONSERVANCY DISTRICT

The Middle Park Water Conservancy District (Middle Park) is a conservancy district created for the purpose of representing Grand and Summit Counties, wherein the basin of the Williams Fork Reservoir is located, in all water matters concerning the Colorado River and its tributaries. Middle Park's intervention in this proceeding, as stated in the Commission's Order of December 5, 1956, is "limited to matters affecting asserted rights and interests specifically set forth in the petition for leave to intervene; * * *".

Middle Park would have included in the license special conditions which would (1) subordinate the license to the terms of the 1964 Consent Decree in the Blue River case; (2) specifically require operation of the Green Mountain Reservoir and Power Plant in coordination with the Williams Fork Reservoir Power Plant so as to prevent damage to the existing facilities such as the head-gates and diversion works near Kremling and (3) restrain simultaneous peaking for power purposes at the Green Mountain and Williams Fork Reservoir so as to prevent damage to riparian owners due to adverse fluctuations in flow.

It does not appear that any present purpose would be served by subjugating the license issued herein to the 1964 Consent Decree. Middle Park demonstrates no instance where the project, since it was placed in operation in 1959 has been operated contrary to the terms of the 1955 Court Decree or that the provisions of the license, as issued in 1963, in any way presently conflict therewith. Nor has it been shown that there is any reason to anticipate that any inconsistencies between the existing license and the 1964 Court

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[6] Article 30 (29 FPC 192, 196) is as follows: "The Licensee shall so far as is consistent with proper operation of the project, allow the public free access, to a reasonable extent, to project-waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property, and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings and other facilities shall not without its express agreement place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that Licensee may construct and maintain as required by the license."

In the revision of Form L-2 in 1964 (31 FPC 528, 531) Article 30, without substantial change, became standard Article 13.

Decree will arise in the future. The Commission was aware of the original 1955 Court Decree when the instant license was issued[7] but did not then see fit to make the modifications which Middle Park now requests. It is no answer that such modification may not have been requested at that time. The fact is that the Commission was required to, and it is to be assumed then did, take official notice of the outstanding decree. It presently thus appears that in the absence of any showing of a change in circumstances since the Williams Fork Project was placed in operation, there is no more reason to now make the license subject to the 1964 Consent Decree than there was to make the license subject to the 1955 Court Decree when the license was originally issued.

Insofar as the requested requirement for coordination of power generation at Williams Fork and Green Mountain for protection of riparian owners from the possible effects of adverse flows and simultaneous peaking is concerned, it similarly does not appear that there is any present necessity for inclusion of such a condition in the license. The Williams Fork Project has been in operation since 1959 and the Green Mountain Project for 11 years prior to that. If there were any evidence in this record of a specific instance, or instances, where a riparian land owner had suffered damage during the years when both projects were in operation because of a lack of coordination in the operation of the projects, or because of simultaneous peaking, some provision in the license to prevent the occurrence of such damage in the future would perhaps be appropriate.

Although Staff Counsel's statement that "In its application for rehearing of the license order, Middle Park stated that Denver's operation of the project was not presently injurious and did not claim present injury at the prehearing conference * * *", is refuted by Middle Park's statement in the aforementioned petition for rehearing that "at no time did the District advise, state, intimate or suggest that the matters not complained of by its Petition to Intervene do not presently occur.", on the evidence at hand, and in the absence of any convincing showing that the predicted contingencies are likely to occur in the future, the inclusion of the suggested provision in the license would be unwarranted.

The disposition hereinbefore made of the contentions of the parties with respect to the Fish and Wildlife Agreement between Denver and Interior eliminates the need for discussion, at this point, of Middle Park's position with respect thereto, or the arguments presented concerning the scope of Middle Park's intervention.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceedings, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions heretofore stated, that:

It is in the public interest that the license issued herein on January 31, 1963, 29 FPC 192, be modified and amended as hereinafter directed.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission, that:

(A) Paragraph (B) of the license order heretofore issued herein on January 31, 1963 is hereby rescinded and the following is substituted therefor:

> (B) This license is also subject to the terms and conditions set forth in Form L-2, December 15, 1953, entitled "Terms and Conditions of Li-

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[7] The stipulation attached to the license application incorporates by reference the final judgment and decree.

cense for Unconstructed Major Project Affecting Lands of the United States" (17 FPC 62) which terms and conditions are attached hereto and made a part hereof, except for Articles 17, 20 and 21 and the last sentence of Article 23 thereof; and subject to the following special conditions set forth herein as additional articles:

(B) The following special conditions are hereby added to the aforementioned license order issued January 31, 1963, as Articles 32, 33, 34 and 35 of the license:

Article 32. The Licensee shall maintain a minimum fishery pool of 1,000 acre feet in Williams Fork Reservoir below which the reservoir shall not be drawn except under the following conditions:

(a) when such drawdown is necessary to make repairs to protect facilities, or

(b) when it is mutually agreed upon between the Licensee and the Colorado Department of Game, Fish and Parks that draining below this level is beneficial to fish management.

Article 33. For conservation of the fishery in the Williams Fork River below the project dam and integral powerhouse the Licensee shall release from Williams Fork Reservoir not less than 15 cfs of water or the inflow, whichever is less, at all times except during an emergency beyond the control of the Licensee, or as may be necessary during temporary periods of time involving maintenance or repairs on the water facilities involved.

Article 34. During the irrigation season, when downstream users are diverting water from the Williams Fork River below Williams Fork Dam pursuant to water rights senior to those of the Licensee, the Licensee shall pass not less than 15 cfs of water through said reservoir in addition to the water being diverted for use by these downstream rights. If the inflow into Williams Fork Reservoir is insufficient to provide these combined flows, only the inflow will be passed.

Article 35. The Commission reserves the right to require the Licensee to adjust the water releases to maintain fish habitat, provided for in Articles 33 and 34, upon petition by the Secretary of the Interior, the Colorado Game, Fish and Parks Commission or the Licensee, and after notice and opportunity for hearing.

(C) Articles 15 and 30 of the license order issued January 31, 1963, are here amended as follows:

Article 15. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for suppression of an existing fire from any stream, conduit, or body of water, natural or artificial, used by Licensee in the operation of the project works covered by the license.

Article 30. The Licensee shall so far as is consistent with proper operation of the project, allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the

Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property, and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings and other facilities shall not without its express agreement place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that Licensee may construct and maintain as required by the license. A reasonable fee may be charged for use by the public of recreational facilities furnished or constructed on the project by the Licensee or its concessionaires.

MARTIN E. RENDELMAN,
Presiding Examiner.

APPENDIX A (PROJECT 2204)

STIPULATION OF FACTS

1. Introduction

This stipulation is submitted in accordance with the request of the Presiding Examiner at the prehearing conference (Tr. 55) that there be submitted in writing a stipulation of facts and a statement of the position of the participants in this proceeding.

2. The Procedural Background

Application was filed on May 11, 1956, and supplemented on May 21, October 4, 5, and 29, 1956, January 18, May 31, and June 28, 1957, and April 27, 1962, by City and County of Denver (Applicant or Denver)—acting by and through and for the use of its Board of Water Commissioners—of Denver, Colorado, for a license under the Federal Power Act (Act) for certain project works, constructed and to be constructed, designated as major Project No. 2204, located on the Williams River, also known as the Williams Fork River, a tributary of the Colorado River, in the region of the Villages of Hot Sulphur Springs and Parshall in Grand County, Colorado, and affecting lands of the United States.

The original dam and water supply reservoir on Williams Fork River were completed and put into use during 1941 under a permit issued by the Bureau of Land Management of the Department of the Interior. In its application. Denver sought a license to authorize the enlargement of the then existing dam and installation of a 3,000 kilowatt generating unit in the reservoir on Williams Fork River. By letter of December 27, 1956, the Commission advised Applicant that it would interpose no objection to its proposal to award contracts for electrical equipment and to proceed with construction at the Applicant's risk. The project was completed and placed in operation by Applicant on July 25, 1959.[1]

On September 4, 1956, Middle Park Water Conservancy District (Middle Park), of Granby, Grand County, Colorado, filed a petition to intervene and protest. The Commission's order of December 5, 1956, permitted intervention "limited to matters affecting asserted rights and interests specifically set forth in the petition for leave to intervene."

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[1] This chronology appears in the order of January 31, 1963, issuing a license. See 29 FPC 192.

A ground of the petition to intervene (*e.g.* pp. 4–5) was that Middle Park had secured appropriate rights on the Williams Fork River which it intended to utilize in the event the Parshall project should ultimately be authorized for federal construction under the Colorado River Storage Project Act.[2] An additional claim was that the operation of the power plant would of necessity affect vested rights of individuals to the use of the Williams Fork and Colorado Rivers and that one of the reasons for its existence was the protection of such rights (Petition, p. 21).

The Commission's order of January 31, 1963, issuing a license to Denver, subjected the license to the terms and conditions set forth in Form L–2, December 15, 1953 (17 FPC 62), with certain exceptions.[3] In addition the license was made subject to special conditions set forth in the order as additional articles numbered 25 to 31.

On February 27, 1963, Denver filed an application for rehearing of the order issuing a license, requesting rehearing with respect to certain conditions set forth in the order. Middle Park, on February 28, 1963, also applied for rehearing in aid of claimed water rights on the Williams Fork River upstream from Project No. 2204 and of its allegation that operation of Project No. 2204 was violative of the Federal Power Act.

Some conditions as to which Denver sought rehearing concerned conservation of fish and wildlife resources. On March 4, 1963, the Secretary of the Interior lodged a petition to intervene and protest and a motion to set aside the license order. Thereafter the Secretary and the Applicant requested that the proceedings be held in abeyance until June 1, 1964, in order to secure agreement between them and the Department of Game and Fish of the State of Colorado with reference to conservation. The continuance was granted and the resulting agreement was submitted to the Commission by letter of Applicant, dated September 30, 1964, and by letters of the Secretary of the Interior, dated October 12 and 29, 1964. See Items-by-Reference C, D, & E.

Denver, in its letter of September 30, 1964 (Item C), did not waive matters raised in its application for rehearing other than those particulars upon which agreement had been reached with the Secretary of the Interior. In view of Denver's objections to standard conditions bearing on fish and wildlife conservation, the Commission, by order of February 9, 1965, permitted the Secretary of the Interior to intervene and ordered a hearing to be held on April 13, 1965.[4]

On April 2, 1965, the Applicant and Middle Park filed a joint motion that a prehearing conference be set no earlier than July of 1965, and that a hearing date be set by the Presiding Examiner. Denver and Middle Park stated that a vigorous attempt was presently being made to reach an agreement and that there was strong likelihood that the requested postponement would result in an adjustment of long-standing differences. In accordance with this request the Commission, on April 12, 1965, ordered a prehearing conference to be held on July 20, 1965.

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[2] 70 Stat. 105 (1956), 43 USC 620, et seq. Section 2 of the Act states: "In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the * * * Parshall * * * [and other] participating projects." The Parshall project is not included in the list of storage and participating projects authorized for construction in Section 1.

[3] For example, Ordering Paragraph (B) of the order issuing license (29 FPC 192, 195) excepts Articles 20 and 21 as these deal, respectively, with determining the actual legitimate original cost of the project and the establishment of an amortization reserve account. These standard articles are based on Sections 4(b) and 10(d) of the Federal Power Act which are not applicable to any project owned by a State or a municipality. See Act of Aug. 15, 1953, 67 Stat. 587, 16 USC 828.

[4] See Order Dismissing Motion, Permitting Intervention, and Fixing Hearing, Feb. 9, 1965.

A prehearing conference was held on July 20, 1965, attended by the Applicant, the Interveners (Interior and Middle Park), and the staff.

3. Special Conditions as to Which Objection Has Been Withdrawn by Denver (Article 29(ii): annual charges for use, etc. of U.S. lands; Article 31: filing of recreational use plan)

Article 29(ii) of the order issuing license imposes annual charges in the amount of $890.40 for the purpose of reimbursing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission line purposes. Denver's objection to this provision, which involved the amount of the charges, was withdrawn at the prehearing conference (Tr. 35).

Also withdrawn by Denver (Tr. 35) was its objection to the requirement (Article 31) that it file a recreational use plan.

4. Stipulation that Proceeding be Briefed on Record of Prehearing Conference

At the prehearing conference all participants orally stipulated that the proceeding be briefed, without the taking of testimony, on the record of the prehearing conference as amplified by Items-by-Reference A to G and by matters ancillary thereto, which are subject to official notice. See Tr. 28–29, 32, 40, 47.

5. Replacement and Exchange of Diverted Water; Energy Replacement: the Blue River Case

The Williams Fork is the middle river in a series of three rivers which flow westerly into the Colorado River from the Continental Divide. In the order in which they enter the Colorado River (from upstream down) these rivers are the Fraser River, the Williams Fork River and the Blue River. The Applicant diverts water from all three rivers to the eastern slope of the Continental Divide for use in the Denver Metropolitan Area by means of the Moffat Tunnel (Fraser River), the Jones Pass Tunnel (Williams Fork River) and the Roberts Tunnel, the outlet to Denver's Dillon Reservoir on the Blue River. See Tr. 20, 22 and Item-by-Reference F (Location Map).

Upstream from the Fraser River, near the head of the Colorado River, the Colorado-Big Thompson project, of the Bureau of Reclamation, diverts water of the Upper Colorado Basin to the eastern slope of the Continental Divide for irrigation and other purposes. A unit of this project is the Green Mountain Dam, Reservoir and Power Plant, downstream from Dillon Reservoir on the Blue River. See Tr. 22 and Item-by-Reference F.

The Interior Department Appropriation Act, 1938 (50 Stat. 564, 595), appropriated funds for the Colorado-Big Thompson project for construction in accordance with the plan described in Senate Document No. 80, 75th Cong. 1st Sess. (1937).[5] Among the features required to accomplish the Colorado-Big Thompson diversion, Senate Document 80 listed the following:

> (1) Storage on the Blue River in what is called Green Mountain Reservoir located about 16 miles southeast of Kremmling, Colo., where the

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[5] S. Doc. No. 80 is incorporated, in part, by reference in Items-by-Reference A (consent decree of 1964) as well as in the prior proceedings in the *Blue River* case. See pages 1153, 1154, *infra*.

> Blue enters the Colorado River. This reservoir is to be used to replace water diverted to the eastern slope that would be required by prior rights along the Colorado River.

Id. at 1. Senate Document 80 contains a section entitled "Manner of Operation of Project Facilities and Auxiliary Features". *Id.* at 2–5. This section, the document indicates, was approved by those interested in irrigation and other uses of water both on the western and eastern slopes of the Continental Divide in Colorado, but the Applicant was not a user to which the document was submitted and neither approved or disapproved of it.

Among the project works included in the instant proceeding is a transmission line from the powerhouse to the United States Government line near Parshall, Colorado.[6] In its application for license, May 11, 1956, Denver noted that it was obligated to construct this transmission line to a place or places "designated by the Secretary of the Interior * * * as provided in the Stipulation", attached to the license application as Exhibit P, in the *Blue River* case. Application for License, p. 3.

Obligations under the *Blue River* settlement were approved by the Congress in the Colorado River Storage Project Act, 70 Stat. 105 (1956), 43 USC 620, *et seq.* Section 11 of that Act provides: "The Final Judgment, Final Decree and stipulations incorporated therein in the consolidated cases of the *United States of America* v. *Northern Colorado Water Conservancy District, et al.*, Civil Nos. 2782, 5016 and 5017, in the United States District Court for the District of Colorado, are approved, shall become effective immediately, and the proper agencies of the United States shall act in accordance therewith."[7]

The stipulation, attached to the license application as Exhibit P, incorporated by reference and approved the Final Judgment and Decree quieting rights of the United States to use waters of the Blue River pursuant to its appropriations in connection with the Colorado-Big Thompson project (Civil No. 2782). See Tr. 18. The stipulation also dealt, among other things, with Denver's rights to the use of waters in the Williams Fork River. Denver's delivery of electric energy to the Bureau of Reclamation, under the stipulation (p. 4), was to make up for what would "have been generated by the Green Mountain Plant" had it not been for the diversion of water by Denver from the Blue River. Among other things, the stipulation provided (p. 2, *et seq.*):

> 4. Notwithstanding their priority dates, the parties hereto further stipulate and agree that the parties to this cause will recognize the right to divert Blue River water by the City and County of Denver and the City of Colorado Springs for municipal purposes only, including domestic, industrial, yard, ground and park care, storage, fire, sewage, military and governmental, excluding, however, water for purposes of irrigation for agriculture, their rights as set forth in the decrees entered by the District Court of Summit County, Colorado, Water District No. 36, Civil Actions Nos. 1805 and 1806, which are part of the record in consolidated Cases Nos. 5016 and 5017; subject nevertheless to the following limitations:
>
> (a) The rights of the City and County of Denver and the City of Colorado Springs are limited solely to municipal purposes as herein described and subject to the rights of the United States of America to fill each year the Green Mountain Reservoir to a capacity of 154,645 acre feet for utilization

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[6] A contract, whereby the Bureau of Reclamation wheels power and energy from Project 2204 to the Public Service Company of Colorado was introduced as Item-by-Reference G.

[7] For Middle Park's interest in the Parshall project under the Colorado River Storage Project Act, see footnotes 2, 8 and text.

by the United States of America in accordance with the "Manner of Operation of Project Facilities and Auxiliary Features", contained in Senate Document No. 80, 75th Congress, 1st Session.

This right to fill the reservoir as herein provided requires an amount of water (after provision for all prior rights) which added to the water in the storage in said Green Mountain Reservoir on a date between April 1st and May 15, to be fixed by the Secretary of the Interior each year in accordance with the plan of operation, would equal 154,645 acre feet had there been no releases from the storage in Green Mountain Reservoir. Provided, however, subject to the decision of the Secretary of the Interior that it will not adversely affect the ability of the Green Mountain Reservoir to fulfill its functions as set forth in the "Manner of Operation of Project Facilities and Auxiliary Features", contained in Senate Document No. 80, 75th Congress, 1st Session, except only as to the production of power, diversions by the City and County of Denver and Colorado Springs may be made from time to time as approved by the Secretary of the Interior * * *.

(b) The City and County of Denver and the City of Colorado Springs in consideration of the agreement by the United States of America to permit the use of rights to the use of water by those municipalities as provided in this Stipulation will

(1) Deliver or cause to be delivered to the United States of America electrical energy to Green Mountain Substation or such other place or places to be designated by the Secretary of the Interior * * *.

(2) The electrical energy herein provided for will be delivered to the United States in substantially the same amounts, at approximately the same hours and at substantially the same rates of delivery that would have been generated by the Green Mountain Power Plant had it not been for the diversions of the waters by the municipalities in question * * *.

(c) The City and County of Denver and the City of Colorado Springs will at all times bypass water in quantities sufficient to meet all legal calls of downstream water rights on the Blue River, and within Colorado below the confluence of that stream with the main stream of the Colorado River, having priorities earlier than the respective priority dates of said cities. The obligation adequately to provide water for the priorities on the Blue River and the Colorado River antedating the respective priority dates of said two cities, may be fulfilled by replacement storage by and on the Blue River or on the Williams River, subject nevertheless to the requirement that the parties provide that the plans for replacement storage will first have been approved by the Secretary of the Interior or his designated representative * * *. The water to be exchanged shall be on hand and in storage when the exchange is proposed. Any exchange approved shall not relieve said cities from the obligation to deliver electrical energy for the amount of water diverted from the Blue River. * * *

The United States District Court for the District of Colorado retained jurisdiction in the *Blue River* case. At the prehearing conference there was received (Item-by-Reference A) a consent decree filed in the case April 16, 1964. Middle Park as well as Denver are signatories. Middle Park, describing the consent decree, stated (Tr. 9):

> * * * in view of the litigation in the United States District Court for the District of Colorado, which culminated in a consent decree, Denver of course being a party, dated April 16, 1964, many of the issues that otherwise would have been raised were settled and adjudicated there. Certain of the issues, as Mr. Saunders mentioned, were reserved for future determination in the event negotiations fail.[8]

6. *Agreement as to Conservation of Fish and Wildlife*

It has been seen that the Department of the Interior and the Applicant jointly propose that a special article dealing with fish and wildlife be included in the license (Items-by-Reference C, D & E). In its letter submitting the agreement (Item D), the Department of the Interior stated that its Fish and Wildlife Service considered the conditions necessary "since the construction and operation of the enlarged Williams Fork Reservoir has had a significant effect upon Williams Fork River trout habitat", and the proposed article would "protect the Williams Fork River fishery below Williams Fork Dam to a reasonable degree" and would "realize the potential of the fishery of Williams Fork Reservoir".

Dated this 24th day of September, 1965.

(S) John D. Lane, Sept. 13, 1965,
JOHN D. LANE,
Commission Staff Counsel.

CITY AND COUNTY OF DENVER ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS,

(S) Glenn G. Saunders.
GLENN G. SAUNDERS.

(S) Willard S. Snyder.
WILLARD S. SNYDER.

(S) ROBERT DELANEY,
for Middle Park Water Conservancy District.

(S) David A. Watts,
DAVID A. WATTS,
Counsel for the Secretary of the Interior.

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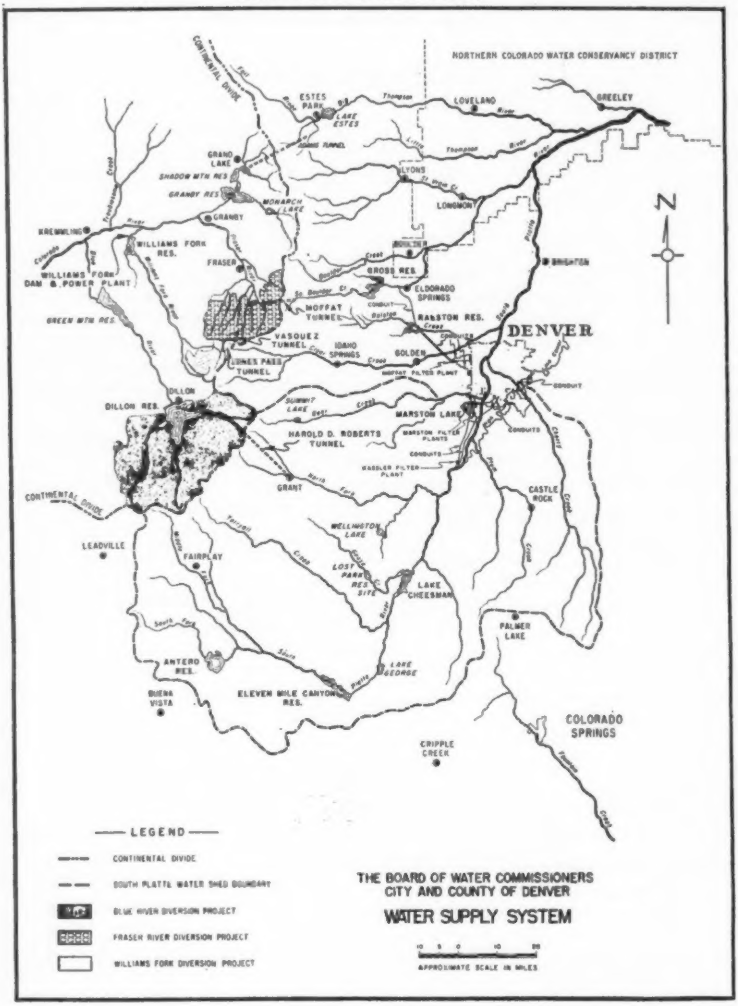
[8] One such reserved issue is "The issue concerning interference with the Parshall Project by the Williams Fork Reservoir, including the extent to which water may lawfully be stored by Denver in its Williams Fork Reservoir for Blue River replacement and matters raised by contested issue of law number 4 of the Pre-Trial Order No. 1 is hereby expressly reserved. Such issue may be set for trial by the Court upon motion of any party." Item-by-Reference A, Paragraph 8.

APPENDIX B—(PROJECT 2204)


NORTHERN COLORADO WATER CONSERVANCY DISTRICT
CONTINENTAL DIVIDE
ESTES PARK
LAKE ESTES
ADAMS TUNNEL
GRAND LAKE
SHADOW MTN RES.
GRANBY RES.
MONARCH LAKE
GRANBY
KREMMLING
Colorado
River
Troublesome Creek
Blue
WILLIAMS FORK RES.
Williams Fork River
WILLIAMS FORK DAM & POWER PLANT
FRASER
Fraser River
GREEN MTN RES.
River
LOVELAND
Thompson
River
GREELEY
Little Thompson River
River
LYONS
St. Vrain Cr.
LONGMONT
Platte
BOULDER
Boulder Creek
GROSS RES.
So. Boulder Cr.
ELDORADO SPRINGS
BRIGHTON
MOFFAT TUNNEL
CONDUIT
Ralston Creek
RALSTON RES.
CONDUITS
South
DENVER
VASQUEZ TUNNEL
IDAHO SPRINGS
Clear Creek
GOLDEN
JONES PASS TUNNEL
MOFFAT FILTER PLANT
Cherry Creek
CONDUIT
DILLON
DILLON RES.
SUMMIT LAKE
Bear Creek
MARSTON LAKE
HAROLD D. ROBERTS TUNNEL
MARSTON FILTER PLANTS
CONDUITS
CONDUITS
KASSLER FILTER PLANT
Plum
Cherry
Creek
CONTINENTAL DIVIDE
GRANT
North Fork
CASTLE ROCK
Creek
LEADVILLE
Middle Fork
FAIRPLAY
Tarryall Creek
WELLINGTON LAKE
Goose C.
LOST PARK RES SITE
LAKE CHEESMAN
River
PALMER LAKE
South Fork
South Platte
ANTERO RES.
LAKE GEORGE
BUENA VISTA
ELEVEN MILE CANYON RES.
COLORADO SPRINGS
CRIPPLE CREEK
Fountain Creek
N
LEGEND
CONTINENTAL DIVIDE
SOUTH PLATTE WATER SHED BOUNDARY
BLUE RIVER DIVERSION PROJECT
FRASER RIVER DIVERSION PROJECT
WILLIAMS FORK DIVERSION PROJECT
THE BOARD OF WATER COMMISSIONERS
CITY AND COUNTY OF DENVER
WATER SUPPLY SYSTEM
10 5 0 10 20
APPROXIMATE SCALE IN MILES

APPENDIX C (PROJECT 2204)

Fish and Wildlife Agreement Contained in Letter of Applicant, September 30, 1964 (Item-by-Reference C) and Letters of Dep't of the Interior (Items D & E)

1. The Licensee shall maintain a minimum fishery pool of 1,000 acre-feet in Williams Fork Reservoir below which the lake shall not be drawn except under the following conditions:

a. When such drawdown is necessary to make repairs to protect facilities, or

b. When it is mutually agreed upon between the Licensee and the Colorado Department of Game, Fish and Parks that draining below this level is beneficial to fish management.

2. The Licensee will allow public access to the land and water area of Williams Fork Reservoir located within the project boundary as shown in Exhibit K in Project No. 2204 before the Federal Power Commission and will permit the use of boats for recreational purposes provided that:

a. It shall be the right of the Licensee to close any land or water area where access to said area may endanger human health or life or hamper the efficient operation of the reservoir.

b. It shall be the right of the Licensee to impose such use limitations as may reasonably be necessary to protect life, health, and property.

3. The Licensee will designate certain areas around the perimeter of the Williams Fork Reservoir for camping, parking, and related uses subject to provisions by agreement with the Colorado Game, Fish and Parks Commission or other qualified public agency to maintain and operate said areas in a neat and orderly manner according to mutually agreeable plan for public use management including the designation of recreational access roads and facilities to be installed, maintained, and operated by the Colorado Game, Fish and Parks Commission or other qualified public agency in accordance with aforesaid plan.

4. The Licensee will release water from Williams Fork Reservoir in accordance with the following:

a. Not less than 15 cfs of water or the inflow, whichever is less, will be passed through said reservoir at all times except during an emergency or during temporary periods of time involving maintenance or repairs on the water facilities involved.

b. During the irrigation season, when downstream users are diverting water from the Williams Fork River below Williams Fork Dam pursuant to water rights senior to those of the Licensee, the Licensee will pass not less than 15 cfs of water through said reservoir in addition to the water being diverted for use by these downstream rights. If the inflow into Williams Fork Reservoir is insufficient to provide these combined flows, only the inflow will be passed. This paragraph, 4b., is subject to the following:

(1) The Colorado Department of Game, Fish and Parks securing written agreements which have been duly executed and recorded in the public records of Grand County and executed copies thereof filed with the Licensee which will guarantee that said excess of water being released in addition to water being released for irrigation, will be passed by said downstream diverters and

will not be diverted from the Williams Fork River between the Williams Fork Dam and the Colorado River for irrigation or other uses.

(2) If it is found by the administrative officials of the State of Colorado that water appropriators are diverting the water being released from Williams Fork Reservoir to maintain fishery habitat, then the additional release provided for in subparagraph b., above, may be discontinued by the Licensee.

c. If at any time the amount of water in storage in Williams Fork Reservoir is insufficient to meet the replacement requirement from said reservoir, the Colorado Game, Fish and Parks Commission shall upon notice, by the Licensee, consult with the Licensee for the purpose of reviewing the aforesaid release schedule and making revisions thereon for the duration of said shortage. In the absence of agreement as to said revisions, the matter shall be subject to determination under applicable law without regard to these conditions.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

DUKE POWER COMPANY, DOCKET NO. E-7285

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued June 29, 1966)

Duke Power Company (Duke) filed an application with the Federal Power Commission on April 18, 1966, as subsequently amended and supplemented, seeking an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire and lease and to merge or consolidate with its own facilities all the electric facilities owned by Greenwood County, South Carolina, and operated by Greenwood County Electric Power Commission (Greenwood Commission).

Duke is incorporated under the laws of the State of North Carolina and is qualified to do business as a foreign corporation in the State of South Carolina, with its principal place of business at Charlotte, North Carolina. Duke is engaged in the generation, purchase, transmission, distribution, and sale of electric energy in 37 counties in North Carolina and 15 counties in South Carolina. Duke owns and operates 33 hydroelectric generating plants with total installed capacity of 768,138 kw and 8 steam electric generating plants with total installed capacity of 3,454,000 kw. Duke is interconnected with and exchanges electric power and energy with South Carolina Electric & Gas Company, Carolina Power & Light Company, Georgia Power Company, Appalachian Power Company, Lockhart Power Company, Yadkin, Inc., and Southeastern Power Administration (SEPA). Retail electric service is furnished by Duke to approximately 819,369 residential, commercial, industrial and street and highway lighting customers. Approximately 59 municipally-owned, cooperatively-owned and investor-owned electric utilities, including Greenwood Commission, receive wholesale electric service from Duke. As of February 28, 1966, the depreciated original cost of Duke's electric plant was $718,060,851. For the 12 months ended February 28, 1966, Duke received a total of $238,918,871 in electric operating revenues. Duke also operates transportation and water supply systems in parts of North Carolina and South Carolina.

Greenwood Commission is a political subdivision of the State of South Carolina and is authorized to do business in that state only with its principal place of business in the City of Greenwood, Greenwood County, South Carolina. Greenwood Commission is engaged in the generation, purchase, transmission, distribution, and sale of electric energy in five counties in South Carolina, namely, Greenwood, Laurens, Newberry, Abbeville, and McCormick. The territory in South Carolina wherein Duke furnishes electric service includes all these counties except McCormick. Greenwood Commission's sources of electric supply in addition to its own generation are Duke, SEPA, and Greenwood Mills, an industrial firm. The electric generation and transmission facilities owned by Greenwood County are operated by Greenwood Commission under the name of "Greenwood County Electric Power System" (Electric Power System) and the electric distribution facilities owned by Greenwood County are operated by Greenwood Commission under the name of "Greenwood County Rural Electric System" (Rural Electric System). All wholesale electric requirements of Rural Electric System are supplied by Electric Power System, which also supplies all or part of the wholesale electric requirements of the City of Greenwood, City of Ninety Six, City of Laurens, Abbeville Water and Electric Plant, and Laurens Electric Cooperative, Inc. In addition, Electric Power System makes wholesale electric sales to South Carolina Electric & Gas Company and provides retail electric service to two residential and seven industrial customers. Approximately 9,412 residential, commercial, industrial, and street and highway lighting customers receive retail electric service from Rural Electric System. These customers include about 95% of all rural customers in Greenwood County and some customers within the City of Greenwood. As of February 28, 1966, the depreciated original cost of that portion of the electric plant of Greenwood County proposed to be acquired by Duke was $6,827,099. The electric operating revenues of that portion of the electric plant of Greenwood County proposed to be acquired by Duke for the 12 months ended February 28, 1966, were $2,746,800.

The electric facilities owned by Greenwood County and situated in the State of South Carolina which Duke proposes to acquire and lease, as set forth below, include a 15,000 kw hydroelectric generating plant, together with its associated substation, dam and reservoir, located at or near Chappells in Newberry County; a 16,000 kw steam electric generating plant located adjacent to the hydro plant; one 13.8 kv transmission line extending 0.68 miles; twenty-seven 44 kv transmission lines totaling approximately 125.5 miles; one 115 kv transmission line extending 35.8 miles from Clark Hill Substation to Clark Hill Tie Station near the City of Greenwood; approximately 45 substations, including 23 located in Greenwood County, 20 located in Laurens County, one located in Newberry County, and one portable unit; a distribution system, including approximately 950 miles of wood pole distribution lines of various voltages (primarily 7.2 kv), approximately 9,350 services (mostly 3-wire), 9,300 meters, 35 line transformers, 239 incandescent lamps, and 880 Mercury vapor lamps; and an office and warehouse building located at the steam plant site.[1]

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[1] Duke represents that it will assume the obligation of Greenwood Commission to sell to the Commissioners of Public Works of the City of Greenwood certain electric facilities owned by Greenwood County and located within the limits of the City of Greenwood, pursuant to a contract dated March 28, 1966, between Greenwood Commission and the Commissioners of Public Works of the City of Greenwood, a copy of which contract is on file with this Commission in Docket No. E-7285. These facilities presently serve approximately 1,200 retail customers.

The hydro generating plant and appurtenant substation, dam and reservoir of Greenwood County are included in its Buzzards Roost Hydroelectric Project located on the Saluda River in Greenwood, Laurens and Newberry Counties. The reservoir is known as Lake Greenwood. This project is operated under a license issued by this Commission to Greenwood County pursuant to the provisions of The Federal Water Power Act and is designated in the records of the Commission as Project No. 1267. The 115 kv transmission line of Greenwood County is also operated under a license, it having been issued by this Commission to Greenwood Commission pursuant to the provisions of Part I of the Federal Power Act. This facility, known as the Clark Hill-Greenwood 115 kv Transmission Line, is located in McCormick and Greenwood Counties and is designated in the Commission's records as Project No. 2167.

By separate order issued concurrently herewith, *Greenwood County, et al.*, Project Nos. 1267 and 2167, *infra* p. 1165, the Commission is approving the lease from Greenwood County to Duke for the period July 1, 1966 through February 10, 1985 of certain electric facilities which are presently included in licensed Project No. 1267, namely: the powerhouse and adjacent concrete spillway structure and related facilities, certain substation facilities, and the dam across the Saluda River and reservoir formed thereby. The Commission is therefore considering the application in Docket No. E-7285 as a request for authorization for Duke to acquire and merge or consolidate with its own facilities that portion of the electric facilities owned by Greenwood County which is not subject to the lease approved by the Commission's aforementioned separate order.[2]

Duke's proposal to acquire and lease all the electric facilities owned by Greenwood County was the subject of an offer tendered by Duke to the members of the legislative delegation of Greenwood County and the members of Greenwood Commission jointly by letter dated May 28, 1965, a copy of which was filed as an exhibit to the application. Subsequently, by Act approved March 11, 1966, the General Assembly of the State of South Carolina,[3] after declaring in the preamble that "the people of Greenwood County * * * should decide for themselves whether the offer of Duke * * * should be accepted or rejected", directed, in sections 1 and 2, the Greenwood County Commissioners of Election to conduct a referendum on April 12, 1966 on the following question, which the Act required to be printed on the ballots:

> Do you favor the sale of the property of Greenwood County controlled by the Greenwood County Electric Power Commission exclusive of the Lake Greenwood Reservoir and the hydro-electric generating facilities at Buzzard's Roost to Duke Power Company?

The Act provided in section 3 that "[I]f in the referendum * * * more than one-half of the total number of voters voting * * * vote in favor of the sale, the Greenwood County Finance Board shall sell and convey all properties of Greenwood County controlled by the Greenwood County Electric Power Commission, excluding the reservoir which is formed by the dam at Buzzard's Roost on the Saluda River and the hydro-electric plant * * * to Duke * * *." In the referendum, conducted on April 12, 1966 in Greenwood County pursuant to legislative direction, more than one-half of the 8,120 votes cast favored the sale of Greenwood County's property to Duke, the vote being 4,909 in favor of the sale and 3,211 opposed to the sale.

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[2] The transfer of the license for Greenwood County's 115 kv transmission line, which comprises Project No. 2167, from Greenwood Commission to Duke is also approved by that separate order.

[3] Act No. 847 of the Acts and Joint Resolutions of South Carolina, 1966, entitled "An Act To Provide For The Sale Of Certain Property Of Greenwood County Controlled By The Greenwood County Electric Power Commission, To Provide For The Lease Of The Lake Greenwood Reservoir And Power Facilities Of Buzzard's Roost Dam If An Election Results Favorably Thereto, To Create An Advisory Board To Advise The Governing Body Of Greenwood County On The Investment Of Certain Funds And To Create The Lake Greenwood Recreation Commission."

The preamble of the Act of the South Carolina legislature approved March 11, 1966 incorporated by reference Duke's May 28, 1965 offer to acquire and lease all the electric facilities owned by Greenwood County. In addition, section 4 of the Act prescribed the terms and conditions of the proposed sale of those facilities substantially as follows:

1. Duke shall pay to Greenwood County the sum of $12,918,176 as the purchase price, subject to closing adjustments to reflect additions to and retirements of plant as well as changes in other asset and liability values from December 31, 1964 for Electric Power System and from June 30, 1964 for Rural Electric System.
2. Duke shall lease Lake Greenwood Reservoir and the hydroelectric generating facilities at Buzzards Roost from Greenwood County for an annual rental of $250,000 for 40 years payable annually in advance. The dam and hydroelectric generating facilities shall be maintained and operated by Duke.
3. The rates to be charged for electric energy for all physical connections of residences or business establishments existing at the time of consummation of the sale shall be the lower of the rates charged by Greenwood Commission and Duke, respectively. The rates to be charged for electric energy for such physical connections made after consummation of the sale shall be the applicable rates of Duke.
4. A sales agreement shall confirm Duke's offer regarding the continued employment of the present employees of Greenwood Commission and the terms and places of their employment.
5. The sale shall be consummated on July 1, 1966.

The terms and conditions of the proposed sale prescribed by the Act of the South Carolina legislature approved March 11, 1966 did not include all the terms and conditions upon which Duke made its May 28, 1965 offer "to purchase from Greenwood County all of the assets of * * * Electric Power System and * * * Rural Electric System, except the Buzzards Roost hydroelectric plant, dam and reservoir for the sum of $12,918,176 cash", although, as pointed out above, the Act incorporated Duke's offer by reference. The following are the principal terms and conditions of Duke's offer which are not expressly or fully prescribed by the Act, but which the application indicates are part and parcel of the proposed acquisition and lease of Greenwood County's electric facilities by Duke:

1. All the outstanding bonds and other indebtedness of Electric Power System and Rural Electric System, respectively, will be redeemed and discharged by Greenwood County from the cash proceeds of the sale of its electric facilities to Duke.[4]

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[4] The outstanding long term debt of Electric Power System consists of $2,180,000 principal amount Serial Bonds, 2½%, due 1967-1986, which are publicly owned. The outstanding long term debt of Rural Electric System consists of $2,814,851 principal amount Refunding Serial Bonds, 2%, which are owned by the Rural Electrification Administration.

2. All employees of Greenwood Commission will (i) become employees of Duke, (ii) be given full credit under the Duke Power Company Employees' Retirement Plan for service with Greenwood Commission, (iii) secure greater life insurance, medical insurance, retirement and vacation benefits and other fringe benefits as employees of Duke, and (iv) receive wage increases from Duke. In addition, no Greenwood Commission employee will be transferred by Duke out of Greenwood County without his consent.

3. All municipal and cooperative wholesale customers of Greenwood Commission, which are preference customers under the Flood Control Act of 1944 with respect to the purchase of electric power generated at the Clark Hill Project and sold by SEPA to Greenwood Commission, will continue to receive SEPA power from the Clark Hill Project either as wholesale customers of Duke, at their present costs or at reduced costs,[5] or as wheeling customers of Duke.

4. All present customers of Greenwood Commission and all future applicants for electric service in the area now served by Greenwood Commission will receive electric service from Duke without being required to make any contributions in aid of construction.

The application represents that the consideration of $12,918,176 cash for that portion of Greenwood County's electric facilities which Duke proposes to purchase is based upon the asset and liability values shown in the December 31, 1964 financial statement of Electric Power System and the June 30, 1964 financial statement of Rural Electric System. As stated above, this purchase price is subject to closing adjustments. Furthermore, under the terms and conditions of Duke's May 28, 1965 offer, if Greenwood County prefers to retain its cash on hand and its investments, then in that event the proposed purchase price will be reduced by the total amount of such cash and investments. The application indicates that as of February 28, 1966, a cash payment of $11,273,000 would have been made by Duke for Greenwood County's net assets other than its cash and investments, which Duke proposes to purchase.

The assets of Greenwood County which Duke proposes to acquire and the liability of Greenwood County which Duke proposes to assume are as follows as of February 28, 1966:

Assets to be acquired

Electric plant in service at original cost	$10, 402, 000
Accumulated provision for depreciation	[1] 3, 574, 901
Net plant	6, 827, 099
Customer accounts receivable	315, 000
Fuel stock	75, 000
Plant materials and operating supplies	235, 000
Prepayments	55, 000
Total assets to be acquired	7, 507, 099

[1] The Commission staff, in its review of the accounting for the proposed acquisition, found that Duke had not given consideration to the recording on its books of $54,901 for Contributions in Aid of Construction now on the books of Rural Electric System. Duke, after being contacted by the staff, said that this amount pertains to funds received for relocation of facilities and that it will be brought over on the books of Duke. However, instead of being classified as Contributions in Aid of Construction, this amount will be added to Accumulated Provision for Depreciation. The Accumulated Provision for Depreciation of $3,574,901 includes this additional amount of $54,901.

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[5] According to the application, Duke will offer to assume Greenwood Commission's contract with SEPA for the purchase of electric capacity and energy.

Liability to be assumed

Customer deposits	$35, 000
Net assets to be acquired	7, 472, 099

A cash payment of $11,273,000 for the above net assets of $7,472,099 would result in the creation of an electric plant acquisition adjustment of $3,800,901 on the books of Duke as of February 28, 1966. The entire amount of any acquisition adjustment created by the proposed transaction will be eliminated by a debit to Duke's earned surplus, according to the application.

The application states that the consummation of the proposed transaction will produce several benefits. Duke points out that it will make no increase in the retail rates now being charged to Greenwood Commission's customers and that there will be rate reductions totaling about $41,000 annually for approximately 30% of Greenwood Commission's retail customers. As to Greenwood Commission's wholesale customers, they will receive from Duke rates which will be as low as those presently being charged if not lower. Duke also calls attention to the fact that not only will all employees of Greenwood Commission be retained by Duke, but also they will receive higher pay and greater fringe benefits as employees of Duke than they are currently receiving. In addition, each Greenwood Commission employee will be given full credit under Duke's Employees' Retirement Plan for his period of service with Greenwood Commission. Furthermore, Duke represents that its ownership and operation of Greenwood County's electric facilities will produce annually approximately $55,700 in local property taxes payable to Greenwood County, a total of $15,300 in local property taxes payable to Laurens, Newberry and McCormick Counties, and an aggregate of $190,949 in franchise, generating, and income taxes payable to the State of South Carolina, none of which taxes are now being paid by Greenwood Commission inasmuch as it is a tax-exempt entity. Duke has sufficient generating capacity to absorb the entire load of Greenwood Commission.

Written notice of the application has been given to The Public Service Commission of South Carolina and the North Carolina Utilities Commission and to the Governor of each of those states. Notice of the application was also published in the Federal Register on April 30, 1966 (31 F.R. 6553), stating that any person desiring to be heard or to make any protest with reference to the application should on or before May 25, 1966, file with the Federal Power Commission, Washington, D.C. 20426, a petition or protest. No petition or protest or request to be heard in opposition to the granting of the application has been received.

In a letter to the Federal Power Commission dated April 15, 1966, William W. Griffith, Greenwood, South Carolina, stated that he was a rural electric consumer served by Greenwood Commission and he criticized the proposed sale of Greenwood County's electric facilities to Duke. Mr. Griffith requested that the Federal Power Commission "intervene in favor of the rural consumers and allow the rural consumers to organize a membership cooperative to purchase these electric facilities." The Commission's General Counsel wrote to Mr. Griffith on April 28, 1966, advising him of Duke's pending application for authority under Section 203 of the Federal Power Act to acquire these electric facilities and enclosing a copy of the notice of application. Mr. Griffith's attention was specifically invited to the provision in the notice designating May 25, 1966, as the final date for filing with this Commission petitions to intervene or protests in connection with Duke's application. No further communication has been received from Mr. Griffith in this matter.

The Public Service Commission of South Carolina, by order dated May 4, 1966, authorized Duke to purchase and lease the electric facilities of Greenwood County upon the terms and conditions as set forth in Duke's offer dated May 28, 1965, and the Act of the General Assembly of the State of South Carolina approved March 11, 1966, all as described above.

The Commission finds:

(1) Duke, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued February 17, 1965, *Carolina Power & Light Company and Duke Power Company*, (33 FPC 231).

(2) By the proposed acquisition of a portion of the electric facilities of Greenwood County, as described above, Duke will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Greenwood County, another person, within the meaning and subject to the requirements of Section 203 of the Act.

(3) The proposed acquisition and merger or consolidation of a portion of the electric facilities of Greenwood County by Duke, as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Act for the reasons set forth above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of a portion of the electric facilities of Greenwood County by Duke, all as described above, is hereby authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.

(B) Duke shall record the transaction herein authorized and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, particularly the provisions of Account 102, Electric Plant Purchased or Sold, Account 114, Electric Plant Acquisition Adjustments, and appropriate Electric Plant Instructions, thereof.

(C) Any acquisition adjustment created by the transaction herein authorized shall be eliminated by a debit to Account 435, Miscellaneous Debits to Surplus.

(D) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(E) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Commissioner Black *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

GREENWOOD COUNTY AND GREENWOOD COUNTY ELECTRIC POWER COMMISSION, AND DUKE POWER COMPANY, PROJECT NOS. 1267 AND 2167

ORDER APPROVING LEASE OF PROJECT NO. 1267 AND TRANSFER OF LICENSE FOR PROJECT NO. 2167

(Issued June 29, 1966)

On May 23, 1966 Greenwood County and Greenwood County Electric Power Commission, licensees respectively for Project Nos. 1267 and 2167, and Duke Power Company (Duke) filed jointly and severally an application for Commission approval, effective as of July 1, 1966, of: (1) a lease by Duke of the project works comprising Greenwood County's Buzzard Roost licensed Project No. 1267, as modified herein; and (2) a transfer to Duke of the license for Greenwood County Electric Power Commission's Clark Hill-Greenwood transmission line Project No. 2167 which Duke proposes to purchase.

The license for Project No. 1267 was issued for a period of 50 years, effective as of February 11, 1935. The project is located on the Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina, and consists principally of an earth dam, a reservoir, a gated spillway, a powerhouse, and a step-up substation, excluding the 44-kv bus used in common with a steam plant.

The construction by the licensee of a steam electric generating station with resulting changes in licensee's operations has altered the function of two project transmission lines which now serve as a part of the licensee's interconnected transmission system and are no longer parts of the project. These facilities comprise a 44-kv transmission loop interconnecting the power plant at Buzzards Roost with the towns of Greenwood, Laurens, Goldville and Newberry and a 44-kv line between the Buzzards Roost plant and Goldville and the 44 kv common bus at the Buzzards Roost plant. The 4.1 kv bus, the three 4.1/44 kv transformer banks at the Buzzards Roost substation and their 44 kv connection to the common 44 kv bus and appurtenant facilities at the power plant will continue to transmit hydroelectric project power from Project No. 1267 and will remain as parts of the project. In this connection, the licensee on June 15, 1966 submitted a filing requesting: (1) deletion from the license of Exhibit K, sheets 1 through 10, entitled "Project Boundary of 44 KV Transmission Lines" (FPC No. 1267–44 through –53), which relate solely to the aforesaid 44-kv transmission lines; (2) that Commission staff be authorized to note on license Exhibit J (FPC No. 1267–54) and license Exhibit K (FPC No. 1267–55) that the 44-kv transmission lines shown thereon have been deleted from the license; and (3) requesting Commission approval of a revised Exhibit M to supersede license Exhibit M to show the above-mentioned deletion of the 44-kv transmission lines.

We are requested to approve a proposed lease to Duke Power Company of Project No. 1267 for a period of 40 years from July 1, 1966. Since the license for the project expires February 10, 1985 we are asked to approve the lease for a period of some 21 years beyond the license period. Although Greenwood County is a municipal licensee, we believe that the proposed lease of its licensed project extending beyond the period of the license would not be binding upon a successor to the license. See, *Susquehanna Power Company, et al.*, 32 FPC 826, 830. Consequently, our approval of the lease will be limited to the period of the license. Since an approval of the lease to Duke for the license period would authorize Duke to operate and maintain the project for the period of such authorization, the administrative annual charges from July 1, 1966 to February 10, 1985 are to be paid by Duke without an exemption, pursuant to Section 11.20(a) of the Commission's Regulations under the Federal Power Act.

Project No. 2167, which is located in Greenwood and McCormick Counties, South Carolina, consists of a transmission line only known as Clark Hill-Greenwood County Transmission Line, and transmits power from the United States' Clark Hill Project on the Savannah River to Greenwood County Electric Power Commission's distribution system. The license for Project No. 2167 was issued for a period of 50 years effective as of August 6, 1953.

Duke has an application before the Commission in Docket No. E–7285 proposing the acquisition of all of the electric transmission facilities of Greenwood County Electric Power Commission, including the transmission line licensed as Project No. 2167, and the two 44-kv transmission lines presently under Greenwood County's license for Buzzards Roost Project No. 1267. By our order of even date, we are approving Duke's application in Docket No. E–7285, *supra*, p. 1158.

Public notice of Duke's application in Docket No. E–7285 has been given which referred to Duke's proposed lease of certain of the project works included in the license for Project No. 1267 and to Duke's proposed acquisition of all of the electric facilities of Greenwood County Electric Power Commission, which include the two 44-kv transmission lines presently under the license for Project No. 1267.

The Commission finds:

(1) The aforementioned 44 kv transmission loop interconnecting the power plant at Buzzards Roost with the towns of Greenwood, Laurens, Goldville and Newberry, the 44 kv line between the Buzzard's Roost plant and Goldville, and the 44 kv common bus at the Buzzards Roost substation are not parts of Project No. 1267 and should be eliminated from the license for the project, and Exhibit K (FPC Nos. 1267 –44 and –53) showing these facilities should be eliminated from the license.

(2) License Exhibits J and K (FPC Nos. 1267–54 and –55), revised by Commission staff as authorized by the licensee, conform to the Commission's rules and regulations and should be reapproved as part of the license.

(3) Exhibit M entitled "General Descriptions of Mechanical, Electrical, and Transmission Equipment", filed June 15, 1966 conforms to the Commission's rules and regulations and should be approved as part of the license, and license Exhibit M, signed February 9, 1934, should be eliminated from the license.

(4) Duke Power Company, the proposed lessee of certain of the project works comprising Project No. 1267 and the proposed transferee of the license for transmission line Project No. 2167 is a corporation organized under the laws of the State of North Carolina and authorized to do business in the State of South Carolina, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws as necessary for the operation of Project Nos. 1267 and 2167.

(5) Approval of the lease of the project works comprising Project No. 1267, for the period indicated above, and approval of the transfer of the license for Project No. 2167, upon compliance with the conditions set forth herein, will not be inconsistent with the public interest.

The Commission orders:

(A) The transmission facilities described in finding (1) above are hereby eliminated from the license for Project No. 1267, and the license Exhibit K designated in the same finding are hereby eliminated from the project.

(B) The license Exhibits J and K designated in finding (2) above, revised as indicated in the finding, are hereby reapproved as part of the license for Project No. 1267.

(C) The Exhibit M mentioned in finding (3)above as having been filed June 15, 1966 is hereby approved as part of the license for Project No. 1267, and superseded license Exhibit M is hereby eliminated from the license for the project.

(D) The transfer of the minor-part transmission line license for Project No. 2167 to Duke Power Company is hereby approved effective as of July 1, 1966 subject to Section 9.3 of the Commission's Regulations under the Federal Power Act; provided that the transfer of the license for Project No. 2167 shall be subject to the terms and conditions of the license, and to all of the provisions of the Act which have not been waived, to the same extent as though Duke Power Company were the original licensee for the project.

(E) The lease of the project works of Project No. 1267 to Duke Power Company is hereby approved effective as of July 1, 1966 and terminating on February 10, 1985; provided that the lessee shall be subject to the terms and conditions of the license except that Duke Power Company shall pay administrative annual charges from July 1, 1966 through February 10, 1985 pursuant to Section 11.20(a) of the Commission's Regulations under the Act.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for Duke Power Company, and returned to the Commission not later than July 1, 1966, accompanied by a certified copy of the executed lease of Project No. 1267, together with evidence of the recording thereof.

Commissioner Black *not participating.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. CP66-339

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1966)

On April 26, 1966, United Fuel Gas Company (Applicant), filed in Docket No. CP66-339 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain measuring and regulating facilities on its 10-inch pipeline in Boyd County, Kentucky, in order to provide a new delivery point for the sale of natural gas to Columbia Gas of Kentucky, Inc. (Columbia of Kentucky), an existing customer of Applicant, for resale to Ashland Asphalt Paving Company (Ashland), all as more fully set forth in the application.

Applicant has been advised by Columbia of Kentucky that it has concluded negotiations with Ashland for the sale of gas for industrial use and that in order to supply natural gas necessary for that purpose Columbia of Kentucky has requested Applicant to provide an additional point of delivery from Applicant's 10-inch gas transmission pipeline in Boyd County, Kentucky. The estimated annual and peak day natural gas requirements for Ashland are 84,000 Mcf and 420 Mcf, respectively. Temporary authorization was granted Applicant on May 12, 1966.

The additional requirements of Ashland will not necessitate an increase in Applicant's currently effective Contract Demand with Columbia of Kentucky.

The total estimated cost of Applicant's proposed construction is $4,900, which will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 23, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 9, 1958, in Docket No. G-13372 (20 FPC 347).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and sale and delivery of natural gas as hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e) and (f) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-1, ET AL.

DECLARATORY ORDER WITH RESPECT TO QUALITY STATEMENTS

(Issued June 30, 1966)

The producers listed in the Appendix have submitted quality statements, as provided in paragraph (F)(1) of Opinion No. 468, 34 FPC 159 at p. 241, as amended, covering sales of gas to Phillips Petroleum Company (Phillips). Phillips processes such gas in its Permian Basin and resells the residue gas to El Paso Natural Gas Company (El Paso) and Northern Natural Gas Company (Northern).

The quality statements submitted by the producers have little or no information on the quality of the gas, and no adjustments are proposed. Attached to each quality statement is a letter signed by Phillips which states that Phillips' major supply of gas in the Permian Basin area is obtained from producers under percentage type contracts which are not filed with the Commission and that only 21 contracts are on file with the Commission covering sales to Phillips. Phillips also states that in 1964, these 21 sales represented less than 0.7% of the total volume purchased by Phillips in the Permian Basin area and that "* * * we do not believe that it is feasible, in view of the time and expense required to determine the cost and amount of quality deductions at each of Phillips' plants involved. Our cursory inspection of the conditions under which your gas is delivered to Phillips, including Btu content, indicates that your current filed rate need not be reduced to reflect deductions for quality deficiencies under Opinion No. 468. Therefore, we do not propose to compute a cost of bringing the gas up to pipeline quality. It is our intention to continue to pay you at the current filed rate".

Phillips resells the producers' gas, after processing, to El Paso under FPC Gas Rate Schedule Nos. 9, 10 and 243 and to Northern under FPC Gas Rate Schedule Nos. 18 and 381. For the three rate schedules covering sales to El Paso, Phillips has filed quality statements reflecting agreement on treating costs to bring the gas to pipeline quality and with the exception of the quality statement for FPC Gas Rate Schedule No. 9,[1] the quality statements were accepted by Commission order of June 13, 1966, subject to the recalculation of the applicable area ceiling rates because of offsetting credits for Btu's between 1000 and 1050 and delivery pressure in excess of 500 psig. As to the two rate schedules covering sales to Northern, Phillips disagrees with Northern on applicable treating costs and both parties have been requested by Commission letters to review the quality statements deductions in an attempt to negotiate agreement.

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[1] Phillips' quality statement with respect to its FPC Gas Rate Schedule No. 9 is disposed of later in this order.

In view of the small volume of gas involved and Phillip's willingness to absorb the treating costs for the subject sales, we conclude that it would be appropriate to accept the quality statements of the producers listed in the Appendix. Since such acceptance will not affect the cost of gas purchased by El Paso or Northern, there is no need to require Phillips to compute its treating costs. Phillips, however, must bear whatever costs, if any, it would have recouped from these producers had it determined its treating costs.

Also under consideration here is the quality statement submitted by Phillips with respect to sales to El Paso under its FPC Gas Rate Schedule No. 9. The agreed upon treating costs and the methods used to determine the adjustments in such quality statement are the same as those described in our order issued June 13, 1966, in Docket No. AR61-1, *et al.*, *supra*, p. 960, relating to other quality statements filed by producers under Opinion No. 468. The adjustments proposed by Phillips are acceptable, except for the proposed upward adjustment for Btu content between 1000 and 1050, for the reasons set forth in the June 13 order. We shall therefore require Phillips to submit a new quality statement reflecting the same adjustments utilized in its present quality statement, except for the improper upward adjustment.

Gulf Oil Corporation (Gulf) submitted on June 22, 1966, a revised quality statement under its FPC Gas Rate Schedule No. 192 for the sale of gas containing carbon dioxide to Transwestern Pipeline Company (Transwestern). The originally submitted quality statement contained an offsetting upward adjustment for delivery pressure above 500 psig, which is not permissible under Opinion No. 468. The revised quality statement omits the offsetting pressure adjustment.

The revised quality statement computes the resulting rate so as to make no treating cost deduction for the permissible 3% carbon dioxide content set forth in the quality standards in Opinion No. 468. Transwestern has agreed to Gulf's method of computation. This method is consistent with the treatment El Paso used in computing deductions for carbon dioxide removal.[2] El Paso made the 3% carbon dioxide content adjustment in computing its plant treating costs, whereas Transwestern did not. Gulf has made the 3% adjustment on the quality statement.

The Commission orders:

(A) The quality statements listed in the Appendix and the revised quality statement submitted by Gulf on June 22, 1966, with respect to its FPC Gas Rate Schedule No. 192 are accepted.

(B) The quality statement relating to sales by Phillips under its FPC Gas Rate Schedule No. 9 is accepted, except insofar as an upward adjustment is proposed for Btu content between 1000 and 1050. The quality statement insofar as it proposes such upward adjustment is rejected.

(C) Phillips shall submit within 30 days of the date of issuance of this order a new quality statement with respect to sales under its FPC Gas Rate Schedule No. 9 reflecting the same adjustments utilized in its present quality statement, except for the rejected upward adjustment described in paragraph (B) above. Such quality statement shall comply with the requirements of paragraph (F) (1) of Opinion No. 468, as amended.

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[2] See order issued June 13, 1966, in Docket No. AR61-1, *et al.*

(D) Phillips shall also file a new refund report within 45 days of the date of issuance of this order to reflect any changes that may be necessary because the sale relating to the new quality statement it is required to file under paragraph (C) above is involved in a Section 4(e) suspension proceeding consolidated in Opinion No. 468. Such refund report shall comply with the provisions of paragraph (I) of Opinion No. 468.

APPENDIX

Producer	Rate schedule No.	Supplement No.	Producer	Rate schedule No.	Supplement No.
Murphy H. Baxter	2	[1] 3	Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company.		
	3	[1] 2			
	4	[1] 2		31	[1] 3
	5	[1] 2		32	[1] 3
	6	[1] 2		33	[1] 3
	7	[1] 2		34	[1] 3
Continental Oil Company	155	[2] 3		35	[1] 3
Gulf Oil Corporation	205	[3] 5		36	[1] 3
Humble Oil & Refining Company.	2	[2] 4		63	[1] 3
				76	[3] 4
	13	[2] 4		77	[3] 4
	147	([4] [5])	Shell Oil Company	239	[3] 2
Pan American Petroleum Corporation.	197	([4] [5])	Skelly Oil Company	121	[7] 2
			Sohio Petroleum Company	65	[3] 3
			Sunray DX Oil Company	192	[1] 3
			Tenneco Oil Company	29	[6] 2
			Union Oil Company of California	138	[1] 2

FOOTNOTES

[1] Resold to Northern Natural Gas Company under Phillips' FPC Gas Rate Schedule No. 381.
[2] Resold to El Paso Natural Gas Company under Phillips' FPC Gas Rate Schedule No. 10.
[3] Resold to El Paso Natural Gas Company under Phillips' FPC Gas Rate Schedule No. 9.
[4] Rate Schedule cancelled. Quality Statement made an exhibit to the Rate Schedule.
[5] Gas formerly resold under Phillips' FPC Gas Rate Schedule No. 18.
[6] Resold to Northern Natural Gas Company under Phillips' FPC Gas Rate Schedule No. 18.
[7] Gas Resold to El Paso Natural Gas Company under Phillips' FPC Gas Rate Schedule No. 243.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER EXTENDING TIME FOR CONSIDERATION OF QUALITY STATEMENTS

(Issued June 30, 1966)

The Commission in paragraph (F)(1) of Opinion No. 468, 34 FPC 159 at p. 241, as amended, required the producer respondents to submit a quality statement with respect to each rate schedule pertaining to sales of gas from the Permian area.

The time period for filing these quality statements was extended to March 21, 1966, by the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) A similar time extension was authorized by the Commission for those producers not covered by the Court stay. Paragraph (F)(2) of Opinion No. 468 provided that where the quality statement reflected full agreement between seller and purchaser, it was to be deemed accepted unless the Commission within 60 days after such filing ordered otherwise. The time period for consideration of these quality statements was extended by Commission order issued April 29, 1966, to June 30, 1966, 35 FPC 639.

By order issued June 13, 1966, in Docket No. AR61-1, *et al.*, *supra*, p. 960, the Commission took action with respect to some 700 quality statements submitted by producers. However, no action was taken in that order, *inter alia*, with respect to the quality statements submitted by the producers listed in the Appendix relating to sales of natural gas to El Paso Natural Gas Company (El Paso) and Hunt Oil Company (Hunt) which is processed in the Wilshire Plant in Upton County, Texas. This plant is owned 50% by El Paso and 50% by Hunt, which is the operator of the plant.

The quality statements listed in the Appendix reflect agreement between the producer and purchaser. Action must therefore be taken on these quality statements by June 30, 1966, unless the time for consideration by the Commission is extended. In order to permit additional time for consideration of these quality statements, the period for consideration will be extended to August 31, 1966.

The Commission orders:

The time for consideration by the Commission of the quality statements listed in the Appendix is extended to August 31, 1966.

APPENDIX

Producer	Purchaser	Rate schedule No.
Gulf Oil Company	El Paso Natural Gas Co	55 225
Humble Oil & Refining Company	El Paso Natural Gas Co	118 144
Hunt Oil Company	El Paso Natural Gas Co	31
Mobil Oil Corporation	El Paso Natural Gas Co	19 104 131 144
Phillips Petroleum Company	El Paso Natural Gas Co	47 309
Joseph Seagram, d/b/a Texas Pacific Oil Company	El Paso Natural Gas Co	20
Sinclair Oil & Gas Company	El Paso Natural Gas Co	158
Standard Oil Company, a division of Chevron Oil Company	El Paso Natural Gas Co	11
Sunray DX Oil Company	El Paso Natural Gas Co	103 133
Texaco Inc	El Paso Natural Gas Co	24
Union Oil Company of California	El Paso Natural Gas Co	98 111
Union Texas Petroleum Company, a division of Allied Chemical Corporation.	El Paso Natural Gas Co	13 41
H. L. Hunt	Hunt Oil Company	15 16 [1] 22 [2] 22 27 28
Hunt Industries	Hunt Oil Company	3 4
Hunt Oil Company	Hunt Oil Company	33 34 [1] 36 [2] 36
Secure Trusts	Hunt Oil Company	3 4
Tri Service Drilling Company	Hunt Oil Company	2

[1] Quality statement for casinghead gas.
[2] Quality statement for old gas-well gas.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, ET AL., DOCKET NO. CP66–226, ET AL.

ORDER DENYING MOTIONS TO SEVER, TO OMIT INTERMEDIATE DECISION PROCEDURE, AND TO GRANT CERTIFICATES

(Issued June 30, 1966)

Arkansas Louisiana Gas Company (Arkla) and Cities Service Gas Company (Cities) filed on May 26 and 27, 1966, respectively, motions to sever Docket Nos. CP64–125, CP62–219 and CP64–131 (Arkla-Cities Project) from these consolidated proceedings, and to omit the intermediate decision procedure and to grant certificates therein. Answers in support were filed by The Gas Service Company, the Midwest Industrial and Commercial Gas Users Association, the Missouri Public Service Commission, the Corporation Commission of Oklahoma, and the City of Springfield and the Board of Public Utilities of Springfield, Missouri. Ashland Oil & Refining Company, Pan American Petroleum Corporation, Mobil Oil Corporation, and W. E. Bakke filed answers in opposition.

In support of their motions, the movants allege that the relationship between the Arkla-Cities Project and the other dockets in these consolidated proceedings is so tenuous as to be non-existent and, therefore, no reason exists for the continued consolidation. Those other dockets from which Arkla and Cities now wish to sever concern the availability and deliverability of the reserves in the Kansas-Hugoton Field, more particularly the application of Cities in Docket No. CP66–226 in which it seeks authorizations to expand its pipeline from the Kansas-Hugoton Field in order to take additional volumes from its presently contracted reserves in that field.

Completely overlooked is our holding in Opinion No. 472 in Docket No. G–20464, *et al., Transwestern Pipeline Company*, 34 FPC 659, issued August 31, 1965, in which we remanded the Arkla-Cities Project for further hearing. The Commission noted therein that Cities has substantial reserves in the Kansas-Hugoton Field but there was a question as to the extent of the deliverability of these reserves, consequently, we stated that in the remanded hearing on the Arkla-Cities Project "we anticipate that the parties will fully explore the possibility of supplying Cities' remaining gas requirements from this source"—specifically, the Kansas-Hugoton Field.

In any proceeding in which an applicant seeks to attach a substantial new gas supply, the question of the availability and deliverability of its present sources of supply are directly related to whether a need for additional gas exists and the extent of that need. The actual deliverability and availability of the Kansas-Hugoton Field have in the past been estimated at various volumes depending upon the proceeding and the party sponsoring the studies. With all the persons who have an interest in the Kansas-Hugoton Field a party to these consolidated proceedings, we believe that the availability and deliverability of that field can be realistically determined so that Cities' need for additional new supplies and the extent of that need, if any, can be properly evaluated. We must be reasonably certain that Cities' presently contracted reserves are inadequate to meet the demands of its system before we permit it to attach a substantial new supply of gas.

The consolidation in this case was granted because, as we stated in our Order Granting Motions To Consolidate, issued January 24, 1966, 35 FPC 128, in these consolidated proceedings, the interrelated nature of all of the applications is self-evident. Indeed, the consolidation removed the need for the parties to present a showing as to the availability and deliverability of the Kansas-Hugoton Field in two separate proceedings. If severance were to be granted, we would in fact be prejudging what the parties in opposition contend is one of the major issues in these proceedings—the ability of Cities' markets to absorb both the Arkla and additional Kansas-Hugoton supplies as presently proposed by Cities. In view of the interrelated nature of the applications which involve common questions of law and fact, we believe that severance should be denied.

Another ground advanced by Arkla and Cities for severance and immediate certification of the project is an alleged urgent need to provide adequate service in Cities' Springfield-Joplin market area during the coming winter season. The parties in opposition contend that Cities will have adequate supplies from several sources to meet the needs of this area in the event the Arkla supply is not forthcoming. Neither Arkla nor Cities set out with specificity in their motions any record support for the alleged urgent need in the Springfield-Joplin area this winter. However, we do not believe this argument is relevant or material to the question of whether severance should or should not be granted. If such a situation does exist, under the Natural Gas Act and our Rules of Practice and Procedure severance is not the appropriate remedy. The appropriate remedy is to request a temporary certificate to authorize facilities sufficient to meet requirements during the coming winter. If such is to be filed it should be done promptly. As pointed out above, severance must be denied because there are common questions of law and fact. Opinion No. 472 requires that the possibility of supplying Cities remaining gas needs from the Kansas-Hugoton Field must be determined in the remanded proceeding. Cities' need for the Arkla-Cities Project primarily depends upon whether its present sources of supply, particularly the Kansas-Hugoton Field, have sufficient availability and deliverability to meet Cities' market requirements.

We also are reluctant to waive the intermediate decision procedure and grant certificates when any of the parties object thereto. Especially in contested proceedings such as this, where the issues are varied and complicated, briefs and an examiner's initial decision are necessary.

The Commission orders:

For the foregoing reasons, Arkla's and Cities' Motions to Sever, To Omit Intermediate Decision Procedure, and To Grant Certificates are hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-340

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 30, 1966)

On April 27, 1966, Central Illinois Public Service Company (Applicant), filed in Docket No. CP66-340 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the Villages of New Berlin and Loami, Sangamon County, Illinois, and their environs, all as more fully set forth in the application.

Applicant proposes to construct, own, operate, and maintain approximately 8 miles of 4-inch gas transmission line extending from a proposed metering and regulating station of Respondent to be located approximately 8 miles south of New Berlin to a point near the western corporate limits of New Berlin and approximately 3½ miles of 2-inch gas transmission line extending from a point 3-2/10 miles south of New Berlin on the 4-inch gas transmission line to a point near the west corporate limits of Loami. The villages of New Berlin and Loami are located in the western part of Sangamon County, Illinois, approximately 8 and 5 miles, respectively, north of the gas transmission main of Respondent.

Applicant also proposes to construct, own, operate and maintain town border stations at or near the west corporate limits of New Berlin and the west corporate limits of Loami. From said town border stations Applicant will construct gas distribution mains for the purpose of operating and maintaining gas distribution systems to serve said villages of New Berlin and Loami and their environs.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	52,983	75,513	84,874
Peak day (Mcf)	503	720	811

The total estimated cost of Applicant's proposed transmission and distribution facilities is $279,330, which cost will be financed from internally generated funds.

Respondent was duly notified by letter of the Commission dated April 28, 1966, of the filing of the application by Applicant for an order directing it to provide the requested connection and service. The Respondent did not file an answer to the application within the time limits prescribed by the Commission's Regulations, and it is therefore assumed it has no objection to the rendering of the requested service.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on May 11, 1966 (31 F.R. 6924). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company (Respondent), a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Central Illinois Public Service Company, an Illinois corporation having its principal place of business in Quincy, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 811 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Panhandle Eastern serve Applicant, as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Panhandle Eastern for distribution in the Villages of New Berlin and Loami, Sangamon County, Illinois, and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Central Illinois Public Service Company as herein described, and to sell and deliver up to 811 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Panhandle Eastern in accordance with the Commission's Regulations, for transportation, distribution and resale in the Villages of New Berlin and Loami and environs in Sangamon County, Illinois, as hereinbefore described. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission, in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MIDHURST OIL CORPORATION, DOCKET NO. CS66-132 AND RILAN CORPORATION (SUCCESSOR TO H. L. MOSES), DOCKET NO. CS66-134

ORDER DENYING INTERVENTION

(Issued June 30, 1966)*

Hunt Oil Company (Hunt) on June 20, 1966, filed a petition for leave to intervene in the above-entitled proceedings, together with a protest to the applications for a small producer certificate filed by the above applicants in such proceedings for sales in the Permian Basin area. These producers sell casinghead gas under Spraberry contracts to Hunt and El Paso Natural Gas Company (El Paso) which is processed at the Wilshire Plant. Hunt thereafter resells its share of the residue gas to El Paso. Hunt and El Paso each have a 50% interest in the Wilshire Plant which is operated by Hunt.

Hunt does not contend that the applicants herein do not qualify as small producers. Hunt claims, however, that it will be caught in a cost-price squeeze if applicants receive small producer certificates because under Opinion

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*See order issued August 22, 1966 permitting withdrawal of application for rehearing, etc.

No. 468, 34 FPC 159, as amended, it is limited to the same 14.5¢ ceiling for the resale of its purchased gas that it must pay applicants for such gas (without any price deductions for alleged quality deficiencies in the purchased gas). The effect, according to Hunt, is that it must absorb all expenses incident to gathering, processing and delivery of such purchased gas, which will cause it to operate the Wilshire Plant at a loss. In support of its position, Hunt has included certain revenue and expense data purportedly reflecting operations at the Wilshire Plant for the years 1960 and 1964.

By order issued March 4, 1966, in Lucy G. Moses, *et al.*, Docket No. CS66-6, *et al.*, 35 FPC 331, we denied a petition to intervene by Hunt similar to the one involved here. That ruling is equally applicable in this case. Under the circumstances alleged by Hunt in its petition, its remedy under our *Permian* decision is not to oppose the granting of small producer certificates, but to apply for relief on the grounds of special circumstances (Opinion No. 468, pp. 209, *et seq.* and 225, *et seq.*).

Assuming *arguendo* Hunt is entitled to relief, such relief will be granted upon application whether Hunt purchases from a small producer or not. It does not appear, therefore, that Hunt will suffer damage from the grant of the small producer applications involved here. Accordingly, Hunt's petition for leave to intervene and its protest should be denied.

The Commission orders:

Hunt's petition for leave to intervene and protest of the small producer applications in the above-entitled proceedings are denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

OPERATING OF NATURAL GAS PIPELINE FACILITIES AT PRESSURES IN EXCESS OF DESIGN PRESSURES SPECIFIED IN CERTIFICATE APPLICATIONS—GENERAL CONDITIONS APPLICABLE TO CERTIFICATES ISSUED TO PIPELINE COMPANIES, DOCKET NO. R-290

ORDER NO. 324

PRESCRIBING A GENERAL CERTIFICATE CONDITION RESPECTING SAFE OPERATING PRESSURES

(Issued June 30, 1966)*

This order amends two sections of the regulations under the Natural Gas Act to inform the Commission of the maximum pressure at which a certificate applicant believes it may operate the proposed facilities safely and without undue risk of failure, and unmistakably to prohibit operation of certificated facilities at pressures exceeding applicant's own maximum, unless a different maximum pressure is prescribed by the Commission in the final certificate order.

The first amendment, to § 157.14(a)(9) requires that applications for a certificate of public convenience and necessity under section 7 of the Natural Gas Act state in Exhibit G-II the maximum operating pressure of each facility to be certificated by the Commission as determined by the provisions set out in the most recent edition of the American Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems, ASA

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*Published in the Federal Register on July 8, 1966 (31 F.R. 9347).

B31.8, or such other standard as the company may propose. A full explanation is required if the company's standard is less stringent than ASA B31.8.

The second amendment, to § 157.20, General Conditions Applicable to Certificates, prohibits operation of the facilities at pressures exceeding the maximum operating pressure as set forth by applicant itself in Exhibit G–II. The Commission, of course, may by special condition prescribe a lower maximum pressure than applicant proposes. The rule also states that it does not authorize operation of facilities in violation of any state regulations which call for a lower maximum pressure.

In response to our Notice of Proposed Rulemaking issued November 2, 1965 (30 F.R. 14110, Nov. 9, 1965), we received comments and suggestions from or on behalf of nineteen natural gas companies[1] and the Independent Natural Gas Association of America. Most of them pointed out that as originally proposed the new condition would restrict a company to operating at the pressure listed in Exhibits G, G–I, and G–II; that such pressure merely indicates the anticipated operating pressure in the particular circumstances illustrated by the exhibit; that in many cases such pressure may be below the maximum safe operating pressure for which the line was designed and tested.

The Commission agrees that our original proposal would be unnecessarily restrictive in some cases if we based it on the operating pressure now included in Exhibits G, G–I and G–II to the certificate application. We therefore require a specific indication from the applicant of the maximum safe operating pressure for the facilities to be certificated. This amendment was suggested in substance by seven of the respondents.[2] Our regulation will automatically prohibit operation of the certificated facilities at any pressure higher than that proposed by applicant itself, unless our certificate order prescribes a different condition. As a matter of general policy, we announce that any applicant proposing a maximum operating pressure which offers a lesser measure of safety than the relevant standard of the ASA B31.8 would bear a heavy burden to justify issuance of an unconditional certificate of public convenience and necessity. The rule here promulgated does not, however, compel a pipeline company to use the ASA B31.8 code as its standard and the Commission would not object to use of more stringent standards by the applicant. In the absence of a federal safety code governing interstate natural gas pipeline companies we have chosen ASA B31.8 as a guide, without preempting the states from adopting more stringent codes.

This is not the first time we have used the ASA B31.8 code as a frame of reference. We have recently issued a rule requiring the annual filing of system flow diagrams by the larger natural gas pipeline companies. These diagrams must show the maximum operating pressure allowable under the Code for (1) the discharge side of compressor stations and (2) other critical points on the company's system (18 CFR 260.8). The system flow diagrams are submitted for systems already in operation to show their peak day and average day capability. The data which we are requiring in this order will be supplied with applications to the Commission for new facilities and will set pressure limits for those facilities for the company's subsequent operations.

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[1] Algonquin Gas Transmission Company, Colorado Interstate Gas Company, Columbia Gas System Service Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Kansas-Nebraska Natural Gas Company, Inc., Lake Shore Pipe Line Company, Lone Star Gas Company, Michigan Gas Storage Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company and Trunkline Gas Company, Pacific Gas Transmission Company, Southern Natural Gas Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transwestern Pipeline Company, United Gas Pipe Line Company, Washington Gas Light Company.

[2] Algonquin, Colorado Interstate, Consolidated, El Paso, Kansas-Nebraska, United Gas Pipe Line, and Washington Gas Light.

The Commission finds:

(1) The amendments herein adopted are necessary and appropriate for the purposes of the administration of the Natural Gas Act.

(2) In view of the reasons given above for the use of Exhibit G-II, it is unnecessary to comply with the notice provision of the Administrative Procedure Act with respect to the amendment to § 157.14(a)(9) here adopted.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7, 16 and 20 thereof (52 Stat. 825, 830, 832, 56 Stat. 84, 15 U.S.C. 717f, 717o, 717s),
orders:

(A) Part 157 of Chapter I of Title 18 of the Code of Federal Regulations is amended as follows:

(1) Section 157.14(a)(9) is amended by adding a new subdivision (vi) as follows:

§ 157.14. Exhibits

(a) *To be attached* * * *

* * * * * * *

(9) ***Exhibit G-II—Flow diagram data.***

* * * * * * *

(vi) The maximum allowable operating pressure of each proposed facility for which a certificate is requested, as permitted under the latest edition of the American Standard Code for Pressure Piping, Gas Transmission and Distribution Systems, ASA B31.8, or as otherwise proposed by the applicant. If a standard other than that of the ASA B31.8 code is used, explain the nature of such standard; whether it is more stringent than ASA B31.8 and, if not, the justification for its use; and designate by an appropriate symbol or legend. As a matter of general policy, the Commission will not normally grant a certificate authorizing operation of facilities at any pressure higher than the maximum permitted by ASA B31.8 and the burden will be on the applicant to justify any such deviation.

(2) Section 157.20 is amended by adding a new paragraph to read as follows:

§ 157.20 General Conditions * * *

* * * * * * *

(g) In the interest of safety and reliability of service, facilities authorized by the certificate shall not be operated at pressures exceeding the maximum operating pressure set forth in Exhibit G-II to the application as it may be amended prior to issuance of the certificate. In the event the applicant thereafter wishes to change such maximum operating pressure it shall file an appropriate petition for amendment of the certificate. Such petition shall include the reasons for the proposed change. Nothing contained herein authorizes a natural gas company to operate any facility at a pressure above the maximum prescribed by state law, if such law requires a lower pressure than authorized hereby.

(Secs. 7, 16, 20; 52 Stat. 825, 830, 832; 56 Stat. 84; 15 U.S.C. 717f, 717o, 717s)

(B) The amendments ordered herein shall be effective as to all applications filed on or after August 1, 1966.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JANUARY 1, 1966 THROUGH JUNE 30, 1966; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954.

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
George T. Abell:					
CS66-109 El Paso Natural Gas Co.	Red Hills Area	N. Mex*	Lea	6 14 66	Iss.
Ada Oil Co., et al.:					
CS66-78 Phillips Petroleum Co.*	Undesignated	Kans	Brazoria	6 14 66	Iss.
K. S. Adams, Jr.:					
CS66-17 Phillips Petroleum Co.*	Liverpool*	Kans	Brazoria*	6 14 66	Iss.
CS66-80 Phillips Petroleum Co.*	Undesignated	Tex	Pecos*	6 14 66	Iss.
Adams Production Co.:					
CI66-79 Phillips Petroleum Co.	Undesignated	Tex	Brazoria	6 14 66	Iss.
Adena Petroleum, Inc.:					
CI66-674 Consolidated Gas Supply Corp.	Lee District	W. Va	Calhoun	4 5 66	Iss.
Robert E. Aikman, et al., d/b/a A. I. K. Ltd., No. 2:					
CI66-898 Michigan Wisconsin Pipe Line Co.	Laverne-Tonkawa	Okla	Beaver	5 12 66	Iss.
CI66-901 Michigan Wisconsin Pipe Line Co.	Mocane-Laverne	Okla	Beaver	5 12 66	Iss.
CI66-1046 Panhandle Eastern Pipe Line Co.	Mocane Chester	Okla	Beaver	6 21 66	Iss.
George E. Allen, Jr., et al.:					
CI66-655 Pennzoil Oil Co	Duval District	W. Va	Lincoln	4 5 66	Iss.
Amax Petroleum Corp.:					
CI66-771 Arkansas Louisiana Gas Co.	Nardin	Okla	Kay	4 18 66	Iss.
CI66-1012 Mountain Fuel Supply Co.	Nitchie Gulch	Wyo	Sweetwater	6 16 66	Iss.
Amerada Petroleum Corp.:					
CI65-958 Panhandle Eastern Pipe Line Co.	Putnam	Okla	Dewey	5 12 66	Iss.
CI66-669 El Paso Natural Gas Co.	Justis	N. Mex	Lea	5 25 66	Iss.
American Trading and Production Corp.:					
CS66-76 Natural Gas Pipeline Co. of America.*	Brown-Bassett	Tex	Wise*	4 22 66	Iss.
Anadarko Production Co.:					
CI60-690 Panhandle Eastern Pipe Line Co.	Mocane Area	Okla	Beaver	4 5 66	Iss.
CI61-78 Panhandle Eastern Pipe Line Co.	Leslie	Kans	Meade	5 25 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Anadarko Production Co.—Con.					
CI63-264 Panhandle Eastern Pipe Line Co.	Carthage Area	Okla	Texas	5 25 66	Iss.
CI66-827 Panhandle Eastern Pipe Line Co.	Panoma Council Grove.	Kans	Stevens	4 8 66	Rej.
CI66-874 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla	Beaver	5 17 66	Iss.
CI66-965 Northern Natural Gas Co.	Camrick Area	Okla	Beaver	5 31 66	Iss.
CI66-982 Northern Natural Gas Co.	Undesignated	Okla	Texas	6 3 66	Iss.
An-Son Corp.:					
CI66-1084 Michigan Wisconsin Pipe Line Co.	Lovedale	Okla	Harper	6 27 66	Iss.
Morris R. Antwell, Operator, et al.:					
CS66-27 El Paso Natural Gas Co.	Jalmat Pool	N. Mex	Lea	4 8 66	Iss.
Apco Oil Corp.:					
CS66-1 El Paso Natural Gas Co.	Eumont*	N. Mex.*	Lea*	4 11 66	Iss.
Nathan Appleman:					
CI66-1107 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans	Hamilton	6 27 66	Iss.
Sam D. Ares:					
CS66-46 El Paso Natural Gas Co.	Jalmat	N. Mex	Lea	4 8 66	Iss.
Arkla Exploration Co.:					
CI66-1049 Arkansas Louisiana Gas Co.	Monroe	La	Union	6 21 66	Iss.
Arnold Petroleum, Inc., Agent:					
CI66-959 Northern Natural Gas Co.	Mocane-Laverne	Okla	Beaver	5 31 66	Iss.
CI66-960 Northern Natural Gas Co.	Mocane-Laverne	Okla	Beaver	5 31 66	Iss.
CI66-961 Northern Natural Gas Co.	Mocane-Laverne	Okla	Beaver	5 31 66	Iss.
Ashland Oil & Refining Co.:					
CI64-1381 Arkansas Louisiana Gas Co.	Star	Okla	Kingfisher	4 26 66	Iss.
Ashmun & Hilliard, Operator, et al.:					
CI66-120 El Paso Natural Gas Co.	Monahans	Tex	Ward*	6 7 66	Iss.
The Atlantic Refining Co., Operator, et al.:					
CI66-795 Northern Natural Gas Co.	Snake Creek	Kans	Clark	4 18 66	Iss.
CI66-823 El Paso Natural Gas Co.	Jicarilla	N. Mex	Rio Arriba	4 18 66	Iss.
Austral Oil Co., Inc., General Operating Agent:					
CI66-810 Arkansas Louisiana Gas Co.	Arkoma	Ark	Haskell*	4 26 66	Iss.
CI66-884 Trunkline Gas Co.	East Bancroft	La	Beauregard	5 12 66	Iss.
J. Douglas Ayers, et al:					
CI66-758 Consolidated Gas Supply Corp.	Murphy District	W. Va	Ritchie	4 18 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Bachus Oil Co.:					
CI65-519 Cities Service Gas Co.	Hardtner	Kans.	Barber	6 16 66	Iss.
J. H. Bander & Pete Couch, Operator, et al.:					
CI66-750 Kansas-Nebraska Natural Gas Co., Inc.	Dude	Colo.	Logan	4 18 66	Iss.
Bankers Trust Co., Trustee:					
CS66-8 El Paso Natural Gas Co.	Amacker-Tippett	Tex.	Upton	5 11 66	Iss.
Banquete Gas Co., A Division of Crestmont Oil & Gas Co.:					
CI66-912 United Gas Pipe Line Co.	Odem*	Tex.	San Patricio	5 12 66	Iss.
Phillip F. Beeler, Operator, et al.:					
CI66-643 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	4 5 66	Iss.
Betz Oil, Inc.:					
CI66-785 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat Top.	Wyo.	Converse	4 26 66	Iss.
Harry C. Boggs, et al.:					
CI66-671 Consolidated Gas Supply Corp.	Washington District.	W. Va.	Calhoun	4 5 66	Iss.
Bogle Farms, Inc.:					
CS66-4 El Paso Natural Gas Co.	Jalmat Pool	N. Mex.	Lea	4 8 66	Iss.
Bowers Drilling Co., Inc.:					
CI66-1034 Cities Service Gas Co.	Little Bear Creek	Kans.	Barber	6 16 66	Iss.
Bowser Gas & Oil Co.:					
CI66-667 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	4 5 66	Iss.
Palmer Bradley, et al.:					
CI66-735 United Gas Pipe Line Co.	Burnell-North Pettus.	Tex.	Bee*	4 11 66	Iss.
W. E. Brewer:					
CI66-787 United Fuel Gas Co.	Kermit District	W. Va.	Mingo	5 12 66	Iss.
H. D. Bruns, Operator, et al.:					
CI66-1001 Lone Star Gathering Co.	Speary	Tex.	Karnes	6 3 66	Iss.
Arthur T. Bryson, Jr., et al.:					
CI66-697 Kentucky-West Virginia Gas Co.	Undesignated	Ky.	Floyd	4 5 66	Iss.
George L. Buckles, et al.:					
CI66-259 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	5 17 66	Iss.
CI66-773 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	6 16 66	Iss.
Burk Gas Corp., Operator, et al.:					
CI66-740 United Gas Pipe Line Co.	Bethany	Tex.	Panola	4 26 66	Iss.
W. K. Byrom					
CS66-37 El Paso Natural Gas Co.	Eumont*	N. Mex.	Lea	4 8 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Cabot Corp. SW:					
CI64-541 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	5 25 66	Iss.
CI66-335 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	4 11 66	Iss.
CI66-710 United Fuel Gas Co.	Huff Creek District.	W. Va.	Wyoming	4 5 66	Iss.
Cactus Drilling Co.:					
CS66-54 El Paso Natural Gas Co.	Tubbs-Justis Pool.	N. Mex.	Lea	4 8 66	Iss.
Charley Cain:					
CI66-702 United Fuel Gas Co.	Undesignated	Ky.	Martin	5 17 66	Iss.
The California Co., a Division of Chevron Oil Co., Operator:					
CI66-698 Texas Eastern Transmission Corp.	North Carlton	La.	Ouachita*	4 26 66	Iss.
Cal-West Development Co.:					
CI66-718 Consolidated Gas Supply Corp.	Spring Creek District.	W. Va.	Wirt	4 11 66	Iss.
Robert E. Campbell:					
CI66-160 Northern Natural Gas Co.	Hugoton	Kans.	Kearny	6 27 66	Iss.
Carey Oil Co., et al.:					
CI66-756 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	5 12 66	Iss.
Joe N. Champlin, Trustee:					
CI66-917 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Dewey	5 25 66	Iss.
Harry Allen Chapman, National Bank of Tulsa, Agent:					
CI66-802 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat Top Field	Wyo.	Converse	4 26 66	Iss.
Chapman & Poland:					
CS66-44 El Paso Natural Gas Co.	Thompson Well Block.	Tex.	Sutton	4 8 66	Iss.
Chicago Bears Football Club, Inc.:					
CI66-675 Consolidated Gas Supply Corp.	Lee District	W. Va.	Harrison	4 5 66	Iss.
Chief Drilling Co., Inc., Operator, et al.:					
CI66-816 Cities Service Gas Co.	Gress Gas Unit	Kans.	Barber	4 26 66	Iss.
F. M. Chisler, et al.:					
CI66-850 Consolidated Gas Supply Corp.	Washington District.	W. Va.	Calhoun	5 17 66	Iss.
Cities Service Co.:					
CI65-62 Lone Star Gathering Co.	Speary	Tex.	Karnes	4 5 66	Iss.
Cities Service Oil Co.:					
CI66-634 United Gas Pipe Line Co.	Corpus Christi Area.	Tex.	Nueces	4 11 66	Iss.
CI66-737 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	4 11 66	Iss.
CI66-813 Texas Eastern Transmission Corp.	North Panther Reef.	Tex.	Calhoun	4 26 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Clark Oil & Refining Corp.:					
CI66-956 Mountain Fuel Supply Co.	Ace Unit Area	Colo	Moffat	6 27 66	Iss.
Cleary Petroleum, Inc.:					
CI65-1255 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Woodward	4 26 66	Iss.
CI66-809 Panhandle Eastern Pipe Line Co.	Adams Ranch	Kans	Meade	4 26 66	Iss.
CI66-857 Oklahoma Natural Gas Gathering Corp.	Ringwood	Okla	Major	5 12 66	Iss.
CI66-1095 Panhandle Eastern Pipe Line Co.	Kismet	Kans	Seward	6 27 66	Iss.
G. M. Close:					
CI66-727 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Dewey	4 11 66	Iss.
Robert E. Cloud, Operator, et al.:					
CI66-1098 Texas Eastern Transmission Corp.	East Timpson	Tex	Shelby	6 27 66	Iss.
Coastal States Gas Producing Co., Operator, et al.:					
CI66-680 Texas Eastern Transmission Corp.	Borchers	Tex	Victoria	4 5 66	Iss.
CI66-721 Lone Star Gas Co.	Nellie District North.	Okla	Stephens	4 26 66	Iss.
CI66-837 Banquet Gas Co., a Div. of Crestmont Oil Co.	East Taft Area	Tex	San Patricio	5 17 66	Iss.
CI66-921 Transcontinental Gas Pipe Line Corp.	Sambo	La	St. Landry	5 12 66	Iss.
Dalton H. Cobb, Operator, et al.:					
CS66-61 Northern Natural Gas Co.	Ozona Southwest Cany.	Tex	Crockett	6 14 66	Iss.
W. L. Conley:					
CI66-929 Carnegie Natural Gas Co.	Green District	W. Va	Wetzel	6 27 66	Iss.
Continental Oil Co.:					
CI64-1206 H. L. Hutton	Tonkawa	Okla	Kay	5 31 66	Iss.
CI66-29 Phillips Petroleum Co.	Undesignated	N. Mex	Lea	6 14 66	Iss.
CI66-114 El Paso Natural Gas Co.	South Andrews	Tex	Andrews	6 27 66	Iss.
CI66-896 El Paso Natural Gas Co.	Jicarillo Area	N. Mex	Rio Arriba	5 12 66	Iss.
CI66-911 United Gas Pipe Line Co.	Lapeyrouse	La	Terrebonne	5 31 66	Iss.
Edwin L. Cox:					
CI66-788 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	4 18 66	Iss.
CI66-1055 United Gas Pipe Line Co.	South Bancroft	La	Beauregard	6 21 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
John L. Cox:					
CI66-65 El Paso Natural Gas Co.	Undesignated	Tex	Reagan	6 7 66	Iss.
Craig Steel & Salvage Co.:					
CI66-563 Mountain Fuel Supply Co.	Little Worm Creek	Wyo	Sweetwater	5 17 66	Iss.
John L. Crawford:					
CI66-695 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Major	4 5 66	Iss.
Crawford Oil & Gas Reserves, Inc.:					
CI66-614 Oklahoma Natural Gas Gathering Corp.	Undesignated	Okla	Major	4 11 66	Iss.
Creslenn Oil Co.:					
CI66-1052 Northern Natural Gas Co.	Panhandle Area	Okla	Ellis	6 21 66	Iss.
Louis Crouch:					
CS66-95 El Paso Natural Gas Co.	Ft. Stockton	Tex	Pecos	4 22 66	Iss.
Crystal Oil & Land Co.:					
CI66-1044 United Gas Pipe Line Co.	Lisbon	La	Claiborne	6 21 66	Iss.
Dalco Oil Co., et al.:					
CI66-842 Texas Gas Transmission Corp.	Cheniere	La	Jackson	6 16 66	Iss.
Dalport Oil Corp., Operator, et al.:					
CS66-15 El Paso Natural Gas Co.	Undesignated	N. Mex	Lea	6 14 66	Iss.
Ann W. Darrow:					
CI66-725 El Paso Natural Gas Co.	Basin Dakota	N. Mex	San Juan	4 26 66	Iss.
Olive H. Daube & Carol Daube Sutton:					
CI66-997 Lone Star Gas Co	Undesignated	Okla	Jefferson	6 3 66	Iss.
Leland Davison, et al.:					
CI66-64 El Paso Natural Gas Co.	Spraberry Trend	Tex	Reagan	6 7 66	Iss.
R. C. Davoust, et al.:					
CS66-88 El Paso Natural Gas Co.	Undesignated	Tex	Undesignated	6 14 66	Iss.
Sam Dazzo, et al.:					
CI66-645 El Paso Natural Gas Co.	Pictured Cliffs*	N. Mex	San Juan	5 17 66	Iss.
Delta Corp.:					
CI66-797 Transwestern Pipeline Co.	Southeast Logan	Okla	Beaver	4 26 66	Iss.
George Dolezal, Jr.:					
CI66-958 Mountain Fuel Supply Co.	Powder Wash	Colo	Moffat	6 16 66	Iss.
D. A. Drake:					
CI66-868 United Fuel Gas Co.	Seary District	W. Va	Roane	5 17 66	Iss.
Dual Production Co.:					
CS66-103 Northern Natural Gas Co.	Ozona Canyon Sand	Tex	Crockett	5 24 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Eric T. Duncan, et al.:					
CI66-666 Consolidated Gas Supply Corp.	Sheridan District	W. Va	Calhoun	4 5 66	Iss.
CI66-690 Consolidated Gas Supply Corp.	Sheridan District	W. Va	Calhoun	4 5 66	Iss.
Robert P. Evans, et al.:					
CI66-818 United Gas Pipe Line Co.	Sibley	La	Webster	5 31 66	Iss.
Ferguson Oil Co., Inc.:					
CI66-684 Cities Service Gas Co.	Deerhead North	Kans	Barber	4 5 66	Iss.
First National Bank in Dallas, Trustee:					
CS66-22 El Paso Natural Gas Co.	Cooper-Jal Pool	N. Mex	Lea	6 14 66	Iss.
First Transportation Gas Corp., Inc.:					
CI61-985 Transwestern Pipeline Co.	Undesignated[*]	Tex[*]	Ochiltree[*]	5 12 66	Iss.
Forest Oil Corp.:					
CI66-607 Lone Star Gas Co	N. W. Palacine Area	Okla	Stephens	4 11 66	Iss.
R. Forgey:					
CI66-751 Texas Eastern Transmission Corp.	Huxley	Tex	Shelby	4 18 66	Iss.
C. J. Fowlston, et al.:					
CI66-947 Colorado Interstate Gas Co.	Keyes	Okla	Cimarron	6 21 66	Iss.
John Franks, Operator, et al.:					
CI66-885 United Gas Pipe Line Co.	Bourg	La	Terrebonne	5 12 66	Iss.
Franks Petroleum Inc.:					
CI66-1048 Arkansas Louisiana Gas Co	Ada	La	Bienville	6 21 66	Iss.
P. C. Frazee:					
CI66-915 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans	Hamilton	5 31 66	Iss.
Francis Friestad, et al.:					
CI66-662 Consolidated Gas Supply Corp.	Salt Lick District	W. Va	Braxton	4 5 66	Iss.
CI66-753 Consolidated Gas Supply Corp.	Salt Lick District	W. Va	Braxton	5 17 66	Iss.
C. R. Gallagher, Jr.:					
CS66-31 Consolidated Gas Supply Corp.[*]	West Virginia[*]	Tex	Reeves	4 8 66	Iss.
C. Gary Garlitz, Operator, et al.:					
CS66-98 El Paso Natural Gas Co.	Undesignated	Tex	Crockett	5 5 66	Iss.
Gas Producers Corp., Operator, et al.:					
CI66-588 El Paso Natural Gas Co.	West Kutz	N. Mex	San Juan	4 26 66	Iss.
Glenn, Inc.:					
CI66-1073 Equitable Gas Co.	Hackers Creek District.	W. Va	Lewis	6 27 66	Iss.

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NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Graham-Michaelis Drilling Co.:					
CI66-765 Kansas-Nebraska Natural Gas Co., Inc.	Beauchamp	Kans	Stanton	4 18 66	Iss.
CI66-780 Panhandle Eastern Pipe Line Co.	Camrick	Kans	Texas	4 26 66	Iss.
CI66-992 Cities Service Gas Co.	Aetna	Kans	Barber	6 21 66	Iss.
Graridge Corp.:					
CI66-1097 Arkansas Louisiana Gas Co.	Milton	Okla	Haskell	6 27 66	Iss.
Erwin E. Grimes:					
CI66-640 Bluebonnet Gas Corp.	Cypress Creek Area	Tex	Newton	4 5 66	Iss.
Otha H. Grimes, Oper., et al.:					
CI66-739 Lone Star Gas Co.	Bob K	Tex	Cooke	4 11 66	Iss.
Grover, McCurdy & Hoffacker, Operator, et al.:					
CS66-106 El Paso Natural Gas Co.	Undesignated	Tex	Crockett	6 14 66	Iss.
Joseph S. Gruss:					
CI66-952 El Paso Natural Gas Co.	Ignacio-Blanco Mesa.	Colo	La Plata	6 16 66	Iss.
Gulf Oil Corp.:					
CI64-544 Natural Gas Pipeline Co. of America.	S. E. Boyd Pool	Okla	Beaver	6 16 66	Iss.
CI66-861 Panhandle Eastern Pipe Line Co.	South Higgins	Okla	Ellis	5 17 66	Iss.
CI66-916 Northern Natural Gas Co.	Shapley Morrow B	Tex	Hansford	5 12 66	Iss.
CI66-1083 Texas Gas Transmission Corp.	West Lisbon	La	Claiborne	6 27 66	Iss.
P. P. Gunn, et al.:					
CI66-752 Consolidated Gas Supply Corp.	Murphy District	W. Va	Ritchie	5 12 66	Iss.
I. Nadel & Herbert Gussman, d/b/a Nadel & Gussman:					
CI66-938 Northern Natural Gas Co.	Wil	Kans	Edwards	5 25 66	Iss.
Hadson Ohio Oil Co.:					
CI66-748 Consolidated Gas Supply Corp.	Spring Creek District.	W. Va	Wirt	4 18 66	Iss.
Brooks Hall, et al.:					
CI66-799 Panhandle Eastern Pipe Line Co.	Northeast Seiling	Okla	Major	4 29 66	Iss.
Frederick C. & Ferris F. Hamilton:					
CI61-31 Panhandle Eastern Pipe Line Co.	Daily Area	Okla	Texas	5 31 66	Iss.
CI66-990 Northern Natural Gas Co.	Undesignated	Okla	Texas	6 3 66	Iss.
Hamilton Run Oil Co.:					
CI66-663 Consolidated Gas Supply Corp.	Clay District	W. Va	Ritchie	4 5 66	Iss.
Jake L. Hamon:					
CI66-534 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Reagan	4 11 66	Iss.

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NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Har-Ken Oil Co., Operator, et al.:					
CI66-863 Texas Gas Transmission Corp.	Midland	Ky	Muhlenberg	5 17 66	Iss.
T. F. Harrington, et al.:					
CI66-686 El Paso Natural Gas Co.	Undesignated	N. Mex	San Juan	6 16 66	Iss.
J. E. Harris, d/b/a Harris Drilling Co., Inc.:					
CI66-619 United Fuel Gas Co.	Right Fork of Beaver.	Ky	Floyd	4 5 66	Iss.
L. E. Haught, et al.:					
CI66-759 Consolidated Gas Supply Corp.	Sheridan	W. Va	Calhoun	4 18 66	Iss.
Hays & Co., Agent:					
CI66-757 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va	Lewis	4 18 66	Iss.
CI66-791 Consolidated Gas Supply Corp.	Washington District.	W. Va	Calhoun	4 18 66	Iss.
CI66-792 Consolidated Gas Supply Corp.	Sherman District	W. Va	Calhoun	4 18 66	Iss.
H. C. Heldenfels, Trustee:					
CI66-855 Banquete Gas Co., A Division of Crestmont Oil & Gas Co.	Taft, East	Tex	San Patricio	4 29 66	Iss.
John W. Herndon, Operator, et al.:					
CI66-1007 Banquete Gas Co., A Division of Crestmont Oil & Gas Co.	North Odem	Tex	San Patricio	6 16 66	Iss.
Estate of William L. Hernstadt, Deceased:					
CS66-9 El Paso Natural Gas Co.	Amacker-Tippett	Tex	Upton	5 11 66	Iss.
Joseph F. Homer & Grace Francine Hill Homer:					
CI66-161 Tennessee Gas Pipeline Co., A Division of Tenneco Inc.	Patterson	La	St. Mary	6 27 66	Iss.
Humble Oil & Refining Co.:					
CI66-512 Arkansas Louisiana Gas Co.	Ames	Okla	Major	4 5 66	Iss.
CI66-617 Arkansas Louisiana Gas Co.	Fouke	Ark	Miller	5 17 66	Iss.
Husky Oil Co., Operator, et al.:					
CI66-33 El Paso Natural Gas Co.	Drinkard*	Wyo	Lea*	6 14 66	Iss.
H. L. Hutton, et al.:					
CI66-509 Cities Service Gas Co.	Tonkawa	Okla	Kay	5 31 66	Iss.
H. L. Ice, Agent:					
CI66-661 Consolidated Gas Supply Corp.	Murphy District	W. Va	Ritchie	4 5 66	Iss.
CI66-676 Consolidated Gas Supply Corp.	Glenville District	W. Va	Gilmer	4 5 66	Iss.

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NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
J. M. Huber Corp.:					
CI66-733 Cities Service Gas Co.	N. E. Waynoka	Okla	Woods	4 11 66	Iss.
CI66-807 Mountain Fuel Supply Co.	Jack's Draw Unit #5.	Colo	Moffat	4 26 66	Iss.
CI66-834 Panhandle Eastern Pipe Line Co.	Greenburg	Kans	Kiowa	5 31 66	Iss.
CI66-1255 Panhandle Eastern Pipe Line Co.	Mocane	Okla	Beaver	6 27 66	Rej.
Janan Oil Co.:					
CI66-934 Valley Gas Transmission, Inc.	Rachal	Tex	Brooks	5 25 66	Iss.
Carroll G. Jones, Operator, et al.:					
CI66-843 United Gas Pipe Line Co.	Mount Olive	Miss	Smith	5 17 66	Iss.
Jumbo Oil & Gas Co., Inc., et al.:					
CI66-673 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va	Lewis	4 5 66	Iss.
Katex Oil Co.:					
CI66-298 Phillips Petroleum Co.	West Panhandle	Tex	Gray	4 26 66	Iss.
Clarence Kenyon:					
CI66-1039 Southern Natural Gas Co.	Monroe	La	Ouachita*	6 21 66	Iss.
Kewanee Oil Co., Operator, et al.					
CI66-866 Southern Natural Gas Co.	East Catahoula	La	St. Martin	5 17 66	Iss.
C. L. Kingsbury, et al.:					
CI66-665 Consolidated Gas Supply Corp.	Knotts Lease	W. Va	Calhoun	4 5 66	Iss.
Kirkpatrick Oil & Gas Co., Operator, et al.:					
CI66-705 Panhandle Eastern Pipe Line Co.	Woodward Area	Okla	Woods	4 5 66	Iss.
CI66-886 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woods	5 17 66	Iss.
L. G. Krieger, et al.:					
CI66-865 El Paso Natural Gas Co.	Cornell-Dakota Gas.	N. Mex	San Juan	5 25 66	Iss.
W. Watson La Force:					
CS66-102 El Paso Natural Gas Co.	Gomez Unit	Tex	Pecos	6 14 66	Iss.
Wm. H. Lambdin, et al.:					
CI66-745 Arkansas Louisiana Gas Co.	South Marlow	Okla	Stephens	4 18 66	Iss.
J. T. Langham:					
CS66-58 El Paso Natural Gas.	Jalmat	N. Mex	Lea	4 8 66	Iss.
Sid Lanier:					
CS66-42 El Paso Natural Gas Co.	Jalmat	N. Mex	Lea	4 8 66	Iss.
Larco Drilling Co.:					
CI66-899 United Gas Pipe Line Co.	Maxie-Pistol Ridge	Miss	Forrest	5 12 66	Iss.

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NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Lario Oil & Gas Co., Operator, et al.:					
CI66-578 Cities Service Gas Co.	Nurse Northeast	Kans	Barber	5 17 66	Iss.
CI66-955 El Paso Natural Gas Co.	Blanco Mesa Verde	N. Mex	San Juan	6 27 66	Iss.
Latham Management Co., Inc.:					
CI66-712 Arkansas Louisiana Gas Co.	Greenwood-Waskom.	La	Caddo Parish	4 18 66	Iss.
D. R. Lauck Oil Co., Inc., Operator, et al.:					
CI66-939 Northern Natural Gas Co.	Wil	Kans	Edwards	5 25 66	Iss.
Leben Drilling, Inc., Operator, el al.:					
CI66-815 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Edwards	4 26 66	Iss.
Robert A. Lee, Operator, et al.:					
CI66-937 Southern Natural Gas Co.	Logansport	La	De Soto	5 25 66	Iss.
Edward H. Leede:					
CI66-936 Mississippi River Transmission Corp.	Woodlawn	Tex	Harrison	5 25 66	Iss.
CS66-39 Northern Natural Gas Co.	Coyanosa	Tex	Pecos	4 8 66	Iss.
H. B. Lively:					
CI66-1054 Tennessee Gas Pipeline Co., a Division of Tenneco Inc.	Columbus	Tex	Colorado	6 21 66	Iss.
Lock 3 Oil, Coal & Dock Co., et al.:					
CI66-754 Consolidated Gas Supply Corp.	Elk District	W. Va	Harrison	5 12 66	Iss.
Emery D. Locke, et al., d/b/a Little Mo Oil & Gas Co.:					
CI66-719 Consolidated Gas Supply Corp.	Union District	W. Va	Ritchie	4 11 66	Iss.
Louise Y. Locke:					
CI66-841 El Paso Natural Gas Co.	West Kutz-Fruitland.	N. Mex	San Juan	6 27 66	Iss.
Richard T. Lyons:					
CS66-112 Northern Natural Gas Co.	Coyanosa	Tex	Pecos	5 24 66	Iss.
M & B Well Service:					
CI66-117 El Paso Natural Gas Co.	Abell Clearfork	Tex	Pecos	6 7 66	Iss.
M & G & Schneider Oil Co.:					
CS66-104 El Paso Natural Gas Co.	Noelke West 880	Tex	Crockett	5 24 66	Iss.
M. F. McCain, Operator, et al.:					
CI66-181 Texas Gas Transmission Corp.	Maurice	La	Lafayette *	4 15 66	Iss.
Alva McCullough, et al., d/b/a Wolf Penn Oil & Gas Co.:					
CI66-632 Equitable Gas Co.	Clay District	W. Va	Ritchie	4 5 66	Iss.
R. L. McKim, et al.:					
CI66-803 Equitable Gas Co.	Glenville District	W. Va	Gilmer	6 10 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Dan E. McMillen, et al.:					
CI66-1017 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Dewey	6 16 66	Iss.
Maguess Petroleum Co.:					
CI66-1053 Northern Natural Gas Co.	Undesignated	Okla.	Harper	6 21 66	Iss.
Marathon Oil Co.:					
CI66-590 Arkansas Louisiana Gas Co.	Arpelar Area	Okla.	Pittsburg	4 18 66	Iss.
CI66-782 Panhandle Eastern Pipe Line Co.	Seiling Area	Okla.	Woodward *	6 21 66	Iss.
Marshall Exploration, Inc.:					
CI66-824 Southern Natural Gas Co.	Logansport	La.	De Soto	4 26 66	Iss.
John L. May:					
CS66-90 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	6 14 66	Iss.
Blain M. Mead:					
CI66-970 Pennsylvania Gas Co.	Mead & Pleasant Town.	Pa.	Warren	6 3 66	Iss.
Mesa Petroleum Co., Operator, et al.:					
CI66-828 Northern Natural Gas Co.	Lovedale	Okla.	Harper	4 26 66	Iss.
CI66-902 Mountain Fuel Supply Co.	Osgood-Federal	Wyo.	Sweetwater	5 12 66	Iss.
CI66-975 Panhandle Eastern Pipe Line Co.	N.E. Seeling	Okla.	Major	6 16 66	Iss.
CI66-977 Northern Natural Gas Co.	Lovedale	Okla.	Harper	5 31 66	Iss.
Me-Tex Supply Co., et al.:					
CI66-123 El Paso Natural Gas Co.	Eumont Gas Pool	N. Mex.	Lea	6 7 66	Iss.
Mid-East Oil Co.:					
CI66-774 Consolidated Gas Supply Corp.	Gaskill Township	Pa.	Jefferson	5 12 66	Iss.
CI66-817 Consolidated Gas Supply Corp.	Gaskill Township	Pa.	Jefferson	4 26 66	Iss.
Midterra Associates, Inc.:					
CI66-906 Lake Shore Pipe Line Co.	Bushnell	Pa.	Erie	5 12 66	Iss.
CI66-968 Equitable Gas Co.	Washington District.	W. Va.	Calhoun	6 16 66	Iss.
CI66-1101 Lake Shore Pipe Line Co.	Bushnell	Pa.	Erie	6 27 66	Iss.
Midwest Oil Corp.:					
CI66-993 Arkansas Louisiana Gas Co.	Centrahoma	Okla.	Coal	6 3 66	Iss.
CS66-79 Cimarron Transmission Co.	Joe Bowen Unit*	Okla.*	Love*	4 1 66	Rej.
Mobil Oil Corp., Operator, et al.:					
CI66-833 El Paso Natural Gas Co.	Spraberry	Tex.	Midland	6 16 66	Iss.
CI66-1037 Texas Eastern Transmission Corp.	Chapman Ranch	Tex.	Nueces	6 27 66	Iss.
J. Hiram Moore, Operator, et al.:					
CI66-110 Northern Natural Gas Co.*	Penrose Kelly Pool	N. Mex.	Lea	6 14 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Morgan Brothers:					
CI66-709 Arkansas Louisiana Gas Co.	Longwood	La.	Caddo	4 5 66	Iss.
Robert Mosbacher, Operator, et al.:					
CI66-1008 United Gas Pipe Line Co.	Roanoke	La.	Jefferson Davis.	6 16 66	Iss.
Henry & Lucy Moses Foundation Trust:					
CS66-7 El Paso Natural Gas Co.	Amacker-Tippett	Tex.	Upton	5 11 66	Iss.
Lucy G. Moses:					
CS66-6 El Paso Natural Gas Co.	Amacker-Tippett	Tex.	Upton	5 11 66	Iss.
W. H. Mossor, et al.:					
CI66-677 Consolidated Gas Supply Corp.	Sheridan District	W. Va.	Calhoun	4 5 66	Iss.
CI66-923 Mountain Fuel Supply Co.	Nitchie Gulch Area.	Wyo.	Sweetwater	6 21 66	Iss.
Webster Myers, et al.:					
CI66-848 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	5 17 66	Iss.
North Central Oil Corp., Operator, et al.:					
CI66-775 Trunkline Gas Co.	Northeast Lake Creek.	Tex.	Montgomery	4 18 66	Iss.
The Nueces Co.:					
CS66-116 El Paso Natural Gas Co.	Stockton	Tex.	Pecos	4 26 66	Wtd.
O K & B Drilling Co., Operator, et al.:					
CI66-869 Cities Service Gas Co.	Undesignated	Okla.	Logan	5 17 66	Iss.
Oil & Gas Futures, Inc. of Tex., Operator, et al.:					
CI66-742 Florida Gas Transmission Co.	Fausse Point	La.	St. Martin	4 18 66	Iss.
Oklahoma Natural Gas Co.:					
CI66-856 Arkansas Louisiana Gas Co.	South Quinton	Okla.	Pittsburg	4 29 66	Iss.
John C. Oxley, et al.:					
CI66-1077 Arkansas Louisiana Gas Co.	South Quinton*	Okla.	Le Flore*	6 21 66	Iss.
Palisades Petroleum Co., Operator, et al.:					
CI66-980 The Manufacturers Light and Heat Co.	Meade District	W. Va.	Marshall	6 16 66	Iss.
Pan American Petroleum Corp.:					
CI66-685 Montana-Dakota Utilities Co.	Indian Butte	Wyo.	Fremont	4 5 66	Iss.
CI66-730 Texas Gas Transmission Corp.	Cheniere	La.	Jackson*	4 18 66	Iss.
CI66-844 Arkansas Louisiana Gas Co.	Cheniere	La.	Ouachita	4 29 66	Iss.
CI66-888 Natural Gas Pipeline Co. of America.	Putnam	Okla.	Dewey	6 16 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Grace Park, et al.:					
CI66-650 United Natural Gas Co.	Undesignated	Pa	Clarion	5 31 66	Iss.
W. H. Pauly, et al.:					
CI66-762 El Paso Natural Gas Co.	Aztec-Fruitland	N. Mex	San Juan	6 27 66	Iss.
Pel-Tex Petroleum Co., Inc., Operator, et al.:					
CI66-962 Texas Eastern Transmission Corp.	Manila Village	La	Jefferson	5 31 66	Iss.
Neville G. Penrose:					
CI66-53 El Paso Natural Gas Co.	Ignacio-Blanco	Colo	La Plata	6 14 66	Iss.
CI66-987 El Paso Natural Gas Co.	Ignacio-Blanco	Colo	La Plata	6 16 66	Iss.
Penrose Production Co., Operator, et al.:					
CS66-56 El Paso Natural Gas Co.	Carthage	Tex	Panola *	6 14 66	Iss.
J. R. Perkins, et al.:					
CI66-679 Lone Star Gas Co.	Sho-Vel-Tum	Okla	Stephens	4 5 66	Iss.
Petroleum Resources, Inc.:					
CI66-660 Consolidated Gas Supply Corp.	New Milton District.	W. Va	Doddridge	4 5 66	Iss.
Loyce Phillips, Operator, et al.:					
CI66-744 Arkansas Louisiana Gas Co.	Whelan	Tex	Harrison	4 18 66	Iss.
Phillips Petroleum Co.:					
CI64-1388 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 21 66	Iss.
CI66-558 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Texas *	4 11 66	Iss.
CI66-559 Panhandle Eastern Pipe Line Co.	McQuiddy Ranch Area.	Tex	Hemphill	4 29 66	Iss.
CI66-707 Panhandle Eastern Pipe Line Co.	Anadarko Basin Area.	Okla	Beaver	4 5 66	Iss.
CI66-741 Southern Natural Gas Co.	Cross Bayou	La	Iberia Parish	4 11 66	Iss.
CI66-778 Arkansas Louisiana Gas Co.	Centrahoma	Okla	Coal	4 18 66	Iss.
CI66-1042 Valley Gas Transmission, Inc.	Chatham	La	Jackson Parish	6 21 66	Iss.
Pioneer Petroleum, Inc.:					
CI66-755 Consolidated Gas Supply Corp.	Union District	W. Va	Harrison	5 12 66	Iss.
John G. Polokoff:					
CI66-506 El Paso Natural Gas Co.	Aztec	N. Mex	San Juan	5 17 66	Iss.
H. L. Ike Poole:					
CI66-793 Almos Gas Gathering Co.	Southwest Silva	Tex	Live Oak	4 26 66	Iss.
William E. Portman:					
CI66-691 Panhandle Eastern Pipe Line Co.	Hugoton	Okla	Texas	6 27 66	Iss.
Celestine V. Powell Trust:					
CS66-89 Northern Natural Gas Co.	Undesignated	Tex	Undesignated	6 14 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Clarence Powell, et al., d/b/a Morgans Run Gas Co.:					
CI66-943 Carnegie Natural Gas Co.	Grant District	W. Va.	Doddridge	6 16 66	Iss.
Quaker State Oil Refining Corp.:					
CI66-704 Equitable Gas Co.	Cove District*	W. Va.	Doddridge*	4 5 66	Iss.
CI66-714 Lone Star Gathering Co.	Speary	Tex.	Karnes	4 5 66	Iss.
CI66-764 Natural Gas Pipeline Co. of America.	South Taloga	Okla.	Dewey	5 17 66	Iss.
CI66-963 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	6 16 66	Iss.
CI66-988 Panhandle Eastern Pipe Line Co.	Checkerboard	Tex.	Hemphill	6 3 66	Iss.
CI66-995 Panhandle Eastern Pipe Line Co.	Checkerboard	Tex.	Hemphill	6 3 66	Iss.
R & G Drilling Co., Inc., Agent, Operator:					
CI66-779 El Paso Natural Gas Co.	Blanco Mesa Verde	N. Mex.	San Juan	5 17 66	Iss.
Reading & Bates Offshore Drilling Co.:					
CI66-878 Michigan Wisconsin Pipe Line Co.	Laverne Area	Okla.	Harper	5 17 66	Iss.
Resler & Sheldon:					
CI66-551 Arkansas Louisiana Gas Co.	Arkoma Area	Okla.	Pittsburg	4 5 66	Iss.
CI66-693 El Paso Natural Gas Co.	Undesignated	Colo.	San Juan*	4 5 66	Iss.
CI66-715 Cities Service Gas Co.	Undesignated	Kans.	Pratt	4 11 66	Iss.
CI66-726 Panhandle Eastern Pipe Line Co.	McQuiddy Ranch Area.	Tex.	Hemphill	4 29 66	Iss.
CI66-746 Arkansas Louisiana Gas Co.	Fouke	Ark.	Miller	5 17 66	Iss.
CI66-951 Southern Natural Gas Co.	Bay Springs	Miss.	Jasper	5 25 66	Iss.
CS66-28 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	6 14 66	Iss.
French M. Robertson:					
CS66-67 El Paso Natural Gas Co.	Undesignated	Tex.	Undesignated	4 22 66	Iss.
Dale M. Robinson, Operator, et al.:					
CI66-1045 Northern Natural Gas Co.	McClanahan East Mississippi Pool.	Kans.	Edwards	6 21 66	Iss.
Roosth & Genecov Production Co., Operator, et al.:					
CI66-789 Texas Eastern Transmission Corp.	South Karon	Tex.	Live Oak	4 18 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Neal Rudder, et al.:					
CI66-786 Carnegie Natural Gas Co.	Glenville	W. Va.	Gilmer	4 18 66	Iss.
CI66-845 United Fuel Gas Co.	Walton District	W. Va.	Roane	5 17 66	Iss.
CI66-879 Equitable Gas Co.	Central District	W. Va.	Doddridge	5 17 66	Iss.
Jack L. Russell:					
CS66-111 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	5 24 66	Iss.
Samedan Oil Corp., Operator, et al.:					
CI66-763 Panhandle Eastern Pipe Line Co.	Greensburg	Okla.	Woods	4 18 66	Iss.
U. G. Sampson, et al.:					
CI66-851 Consolidated Gas Supply Corp.	Washington District.	W. Va.	Calhoun	5 17 66	Iss.
San Jacinto Drilling Co., Operator, et al.:					
CI66-935 United Gas Pipe Line Co.	North Lane City Area.	Tex.	Wharton	5 31 66	Iss.
Alma Oringderff Schaeffer:					
CI66-1079 Northern Natural Gas Co.	Camrick Area	Okla.	Beaver	6 21 66	Iss.
James F. Scott, Agent:					
CI66-706 Consolidated Gas Supply Corp.	McClellan District	Okla.	Beaver	4 5 66	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI66-820 United Gas Pipe Line Co.	Lafourche Crossing	La.	Lafourche	4 26 66	Iss.
H. F. Sears:					
CI66-461 Northern Natural Gas Co.	Farnsworth Lower 870.	Tex.	Ochiltree	5 13 66	Wtd.
CI66-806 El Paso Natural Gas Co.	Langlie Mattix	N. Mex.	Lea	6 16 66	Iss.
CI66-832 Natural Gas Pipeline Co. of America.	Mobeetie	Tex.	Wheeler	4 29 66	Iss.
CI66-1004 Northern Natural Gas Co.	West Snake Creek	Kans.	Clark	6 21 66	Iss.
Service Pipe & Equipment, Inc.:					
CI66-734 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	4 11 66	Iss.
Shenandoah Oil Corp., Operator, et al.:					
CI66-983 Northern Natural Gas Co.	Como	Okla.	Beaver	6 21 66	Iss.
Sierra Petroleum Co., Inc.:					
CI66-696 Cities Service Gas Co.	Palmer Miss. Oil & Gas Pool.	Kans.	Barber	4 5 66	Iss.
Slade, Inc.:					
CS66-23 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan*	4 8 66	Iss.
Jas. F. Smith, Operator, et al.:					
CI66-819 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	4 26 66	Iss.
A. M. Snider, d/b/a Hundred Gas Co.:					
CI66-1032 Carnegie Natural Gas Co.	Ellsworth District	W. Va.	Tyler*	6 16 66	Iss.
CI66-1033 Carnegie Natural Gas Co.	Green District	W. Va.	Wetzel	6 16 66	Iss.
CI66-1081 Carnegie Natural Gas Co.	Clay District	W. Va.	Monongalia	6 27 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Socony Mobil Oil Co., Inc.:					
CI66-694 Kansas-Nebraska Natural Gas Co., Inc.	Boone Dome	Wyo	Natrona	4 5 66	Iss.
CI66-700 Montana-Dakota Utilities Co.	Manderson	Wyo	Big Horn	4 5 66	Iss.
Southern Minerals Corp.:					
CI66-870 United Gas Pipe Line Co.	Fox	Tex	Refugio	5 17 66	Iss.
CI66-981 Texas Eastern Transmission Corp.	Gas Plant	Tex	Nueces	6 3 66	Iss.
Southern Petroleum Exploration, Inc.:					
CS66-57 El Paso Natural Gas Co.	Panhandle*	Tex	Lea	4 8 66	Iss.
Southern Union Production Co.:					
CI66-772 Arkansas Louisiana Gas Co.	Arkoma Area	Okla	Latimer	4 18 66	Iss.
CI66-1003 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 16 66	Iss.
Southwest Oil Industries, Inc.:					
CI66-600 El Paso Natural Gas Co.	Mocane-Laverne	Okla	Beaver*	6 21 66	Iss.
CI66-731 Michigan Wisconsin Pipe Line Co.	Mocane	Okla	Beaver	5 25 66	Iss.
Southwestern Development Co.:					
CI66-903 Carnegie Natural Gas Co.	Union District	W. Va	Ritchie	6 16 66	Iss.
Speck & Norris Gas Co., et al.:					
CI66-664 Consolidated Gas Supply Corp.	Fox Hrs. Center	W. Va	Calhoun	4 5 66	Iss.
Aurelia Spence:					
CS66-105 Northern Natural Gas Co.	Prentice*	Tex	Terry*	6 14 66	Iss.
Sydney Spofforth:					
CI66-658 Consolidated Gas Supply Corp.	Grant District	W. Va	Ritchie	4 5 66	Iss.
CI66-672 Consolidated Gas Supply Corp.	Grant District	W. Va	Ritchie	4 5 66	Iss.
Paul F. Starr, Agent:					
CI66-668 Consolidated Gas Supply Corp.	Washington District	W. Va	Calhoun	4 5 66	Iss.
CI66-717 Consolidated Gas Supply Corp.	Lee District	W. Va	Calhoun	4 11 66	Iss.
Statex Petroleum, et al.:					
CI60-327 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	5 12 66	Iss.
Subsurface Reserve Corp.:					
CI66-881 Texas Eastern Transmission Corp.	Christmas	Tex	De Witt	5 17 66	Iss.
Sun Oil Co.:					
CI66-720 Panhandle Eastern Pipe Line Co.	N. Bishop	Okla	Ellis	4 11 66	Iss.
CI66-781 Cities Service Gas Co.	Bishop Area	Okla	Roger Mills	4 18 66	Iss.
CI66-784 The Manufacturers Light and Heat Co.	The Ryan Unit	Pa	Fayette	5 17 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION¹
Sunray DX Oil Co.:					
CI66-723 Northern Natural Gas Co.	Shattuck Operating	Okla	Ellis	4 11 66	Iss.
CI66-864 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Woodward	6 16 66	Iss.
CI66-873 Tennessee Gas Pipeline Co.	Placedo	Tex	Victoria	5 17 66	Iss.
CI66-877 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	5 17 66	Iss.
Sunset International Petroleum Corp.:					
CI66-826 El Paso Natural Gas Co.	Blanco	N. Mex	San Juan	6 27 66	Iss.
The Superior Oil Co.:					
CI66-777 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat T.	Wyo	Converse	4 26 66	Iss.
Tenneco Oil Co.:					
CI66-101 El Paso Natural Gas Co.	South Andrews	Tex	Andrews	6 27 66	Iss.
CI66-821 Natural Gas Pipeline Co. of America.	South Taloga	Okla	Dewey	5 17 66	Iss.
CI66-822 El Paso Natural Gas Co.	Jicarilla Area, San Juan Basin.	N. Mex	Rio Arriba	5 17 66	Iss.
CI66-967 Mississippi River Transmission Corp.	Woodlawn	Tex	Harrison	5 31 66	Iss.
CI66-1080 Texas Gas Transmission Corp.	Shiloh	La	Union	6 21 66	Iss.
Texaco Inc.:					
CI66-794 Transwestern Pipeline Co.	Cree-Flowers*	Tex	Roberts	6 16 66	Iss.
CI66-867 El Paso Natural Gas Co.	Huerfanito Mesa Verde.	N. Mex	San Juan	5 17 66	Iss.
Texas Gas Exploration Corp.:					
CI66-743 Texas Gas Transmission Corp.	Midland	Ky	Muhlenberg	4 5 66	Iss.
Texota Oil Co.:					
CI66-423 El Paso Natural Gas Co.	Blanco	N. Mex	San Juan	5 31 66	Iss.
W. L. Todd, Jr., et al.:					
CS66-16 El Paso Natural Gas Co.	Undesignated	N. Mex	Lea	6 14 66	Iss.
Glenn Tompkins, et al., d/b/a Oil Ridge Gas Co.:					
CI66-1035 Pennzoil Co.	Grant District	W. Va	Ritchie	6 16 66	Iss.
Mike Trant, d/b/a Mike Trant Drilling Co., Operator, et al.:					
CI66-907 United Gas Pipe Line Co.	Willow Springs	Tex	Gregg	5 12 66	Iss.
Trigg Drilling Co., et al.:					
CI66-829 Natural Gas Pipeline Co. of America.	South Taloga	Okla	Dewey	4 29 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Trojan Coal & Petroleum Corp.:					
CI66-659 Consolidated Gas Supply Corp.	Grant District	W. Va.	Gilmer	4 5 66	Iss.
CI66-761 Consolidated Gas Supply Corp.	Center District	W. Va.	Gilmer	4 18 66	Iss.
Twin Gas Co., Operator:					
CI66-853 Panhandle Eastern Pipe Line Co.	East Aline Processing Plant.	Okla.	Alfalfa	5 17 66	Iss.
CI66-979 Lone Star Gas Co.	Dixie Processing Plant.	Okla.	Stephens	5 31 66	Iss.
Union Drilling, Inc.:					
CI66-840 Equitable Gas Co.	Meade District	W. Va.	Upshur	5 17 66	Iss.
Union Oil Co. of California:					
CI66-728 Arkansas Louisiana Gas Co.	North Carlton	La.	Ouachita	4 11 66	Iss.
CI66-1016 Texas Gas Transmission Corp.	Welsh	La.	Jefferson	6 21 66	Iss.
Union Texas Petroleum, a division of Allied Chemical Corp.:					
CI66-621 United Gas Pipe Line Co.	Abbeville	La.	Vermilion	5 12 66	Iss.
CI66-732 Northern Natural Gas Co.	N.E. Gate Lake	Okla.	Harper	4 11 66	Iss.
A. M. Van Flick, Agent:					
CI66-716 Consolidated Gas Supply Corp.	Salt Lick District	W. Va.	Braxton	4 11 66	Iss.
Van-Grisso Oil Co.:					
CI66-945 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Woods	5 25 66	Iss.
G. H. & Jack C. Vaughn:					
CI66-1005 United Gas Pipe Line Co.	Northeast Lisbon	La.	Claiborne	6 16 66	Iss.
CS66-14 El Paso Natural Gas Co.	Ingacio (Fruitland-Pictured Cliffs).	Tex.	Pecos	6 14 66	Iss.
The Vector Corp., Operator, et al.:					
CJ66-1074 Valley Gas Transmission, Inc.	North Buena Suerte.	Tex.	Duval	6 21 66	Iss.
The Estate of R. W. Viersen:					
CI66-872 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	4 29 66	Iss.
Violet Oil & Gas, Operator, et al.:					
CI66-1091 Valley Gas Transmission, Inc.	Knolle	Tex.	Nueces	6 27 66	Iss.
Virgin Oil Co.:					
CI66-858 United Fuel Gas Co.	Geary District	W. Va.	Roane	5 17 66	Iss.
CI66-859 United Fuel Gas Co.	Henry District	W. Va.	Clay	5 17 66	Iss.
Frank H. Walsh:					
CI66-847 Kansas-Nebraska Natural Gas Co., Inc.	Elm Grove	Colo.	Logan	5 12 66	Iss.
Herman C. Warner, Agent:					
CI66-683 Equitable Gas Co.	Troy District	W. Va.	Gilmer	4 5 66	Iss.
Ralph L. Warner, et al.:					
CI66-969 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	6 16 66	Iss.

See footnotes at end of table, p. 1203.

NEW SERVICE CERTIFICATES—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Ed E. Watts:					
CS66-43 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	4 8 66	Iss.
Shirley H. Weaver Trust:					
CS66-94 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	4 22 66	Iss.
W. R. Weaver:					
CS66-93 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	4 22 66	Iss.
A. D. Weier, Jr., et al.:					
CS66-25 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	6 14 66	Iss.
Wessely Petroleum, Ltd., Operator, et al.:					
CI66-925 Northern Natural Gas Co.	Bechthold	Tex.	Lipscomb	5 25 66	Iss.
Westbrook-Thompson Holding Corp.:					
CS66-113 West Texas Gathering Co.	Emperor Devonian-Ellger.	Tex.	Winkler	6 14 66	Iss.
Whitestone Petroleum Corp., Operator, et al.:					
CI66-882 Texas Eastern Transmission Corp.	Manila Village	La.	Jefferson	5 17 66	Iss.
Betty M. Williams:					
CS66-92 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	4 22 66	Iss.
Clayton W. Williams, Jr.:					
CS66-91 Northern Natural Gas Co.	Coyanosa	Tex.	Pecos	4 22 66	Iss.
Russell Williamson, et al.:					
CI66-678 Kentucky-West Virginia Gas Co.	Rockhouse Creek	Ky.	Martin	6 16 66	Iss.
Wood Oil Co.:					
CI66-364 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	4 5 66	Iss.
Woods Petroleum Corp., Operator, et al.:					
CI66-485 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	4 26 66	Iss.
George L. Yaste, d/b/a Oil States Sales Co.:					
CI66-1014 Carnegie Natural Gas Co.	Union District	W. Va.	Ritchie	6 16 66	Iss.
Yucca Petroleum Co.:					
CI66-1006 Transwestern Pipeline Co.	South Follett (Morrow).	Tex.	Lipscomb	6 16 66	Iss.
CS66-19 El Paso Natural Gas Co.*	Northwest Midwell.*	N. Mex.	Seminole*	4 8 66	Iss.
J. M. Zachery, et al.:					
CS66-55 El Paso Natural Gas Co.	Eumont Gas	N. Mex.	Lea	6 14 66	Iss.

See footnotes at end of table, p. 1203.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JANUARY 1, 1966 THROUGH JUNE 30, 1966

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Fred J. Ayesh, Operator, et al.:					
CI66-954 Cities Service Gas Co.	Undesignated	Kans.	Cowley	5 31 66	Iss.
George P. Black:					
CI66-849 Consolidated Gas Supply Corp.	Union District	W. Va.	Ritchie	5 12 66	Iss.
Harry Bohr, et al.:					
CI66-687 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	4 5 66	Iss.
The British-American Oil Producing Co.:					
CI66-972 Texas Gas Transmission Corp.	South Bayou Mallet.	La.	Acadia	6 3 66	Iss.
CI66-973 Socony Mobil Oil Co., Inc.	Cameron	La.	Cameron	6 3 66	Iss.
Charles Bury:					
CI66-688 Consolidated Gas Supply Corp.	Warren District	W. Va.	Upshur	4 5 66	Iss.
Rodney Delange, Operator, et al.:					
CI66-871 Lone Star Gathering Co.	Yorktown 7200 Feet A.	Tex.	De Witt	5 12 66	Iss.
V. W., P. M. & C. M. Frost:					
CI66-920 Tennessee Gas Pipeline Co., a Division of Tenneco Inc.	Chess	Tex.	Willacy	5 25 66	Iss.
Garrett, Woodford & Swadley:					
CI66-1009 Consolidated Gas Supply Corp.	The Mile District	W. Va.	Harrison	6 16 66	Iss.
Jack W. Grigsby, Operator, et al.:					
CI66-976 Texas Gas Transmission Corp.	Carthage	Tex.	Panola	5 31 66	Iss.
Gulf Oil Corp., Operator, et al.:					
CI66-722 El Paso Natural Gas Co.	Teague McKee Pool.	N. Mex.	Lea	4 11 66	Iss.
CI66-804 El Paso Natural Gas Co.	Teague McKee Pool.	N. Mex.	Lea	6 16 66	Iss.
Jake L. Hamon, Operator, et al.:					
CI66-800 Phillips Petroleum Co.	Azalea	Tex.	Midland	6 16 66	Iss.
W. V. Hardin:					
CI66-993 United Gas Pipe Line Co.	Weesatche	Tex.	Goliad	6 3 66	Iss.
H. C. Heldenfels, Trustee:					
CI66-854 Banquete Gas Co., a Division of Crestmont Oil Co.	Taft Area	Tex.	San Patricio	4 29 66	Iss.
Mrs. Anna Huber:					
CI66-670 Consolidated Gas Supply Corp.	Sardis	W. Va.	Harrison	4 5 66	Iss.
Hudgins Oil & Gas Co., Inc.:					
CI66-767 Tennessee Gas Transmission Co.	Magnet-Withers	Tex.	Wharton	4 18 66	Iss.

See footnotes at end of table, p. 1203.

ABANDONMENT APPLICATIONS—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Humble Oil & Refining Co.:					
CI66-846 Phillips Petroleum Co.	Weiner	Tex.	Winkler	5 12 66	Iss.
Jack Properties, Inc.:					
CI66-985 Tennessee Gas Transmission Co.	Morales	Tex.	Jackson	6 3 66	Iss.
CI66-986 Tennessee Gas Transmission Co.	Tolson*	Tex.	Victoria	6 3 66	Iss.
The Jupiter Corp., Operator, et al.:					
CI66-711 Tennessee Gas Transmission Co.	North Magnolia	Tex.	Jim Wells	4 5 66	Iss.
C. H. Lyons, Jr., et al.:					
CI66-699 Texas Eastern Transmission Corp.	South Hallsville	Tex.	Harrison	4 5 66	Iss.
CI66-790 Trunkline Gas Co.	West Merryville	La.	Beauregard	6 3 66	Iss.
Miller & Fox Minerals Corp., Operator, et al.:					
CI66-1020 Texas San Juan Oil Corp.	Miller & Fox	Tex.	Jim Wells	6 16 66	Iss.
CI66-1021 Hydrocarbon Transmission Co.	North Asog	Tex.	Jim Wells	6 16 66	Iss.
Monsanto Co.:					
CI66-932 Mississippi River Transmission Corp.	Hico-Knowles	La.	Lincoln	5 25 66	Iss.
CI66-1018 Texas Eastern Transmission Corp.	South Lucky	La.	Bienville	6 16 66	Iss.
A. F. Morris, Agent:					
CI66-1076 United Fuel Gas Co.	Union District	W. Va.	Lincoln	6 27 66	Iss.
Wm. G. & Theodosia M. Nolan, d/b/a Mundco Co.:					
CI66-511 United Gas Pipe Line Co.	Lake Bistineau	La.	Bienville	4 29 66	Iss.
Okmar Oil Co.:					
CI66-760 Consolidated Gas Supply Corp.	Sheridian District	W. Va.	Calhoun	5 17 66	Iss.
Petroleum, Inc., Operator, et al.:					
CI66-964 Cities Service Gas Co.	Hartner	Kans.	Barber	5 31 66	Iss.
C. F. Raymond:					
CI66-933 El Paso Natural Gas Co.	Bondad Area	Colo.	La Plata	6 16 66	Iss.
Rich Oil & Gas Co.:					
CI66-1011 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	6 16 66	Iss.
Lewis S. Rosenthal, et al.:					
CI66-1030 United Gas Pipe Line Co.	West Puerto Bay	Tex.	San Patricio	6 16 66	Iss.
R. O. Roy & Co., Inc.:					
CI66-510 United Gas Pipe Line Co.	Lake Bistineau	La.	Bienville	4 29 66	Iss.

See footnotes at end of table, p. 1203.

ABANDONMENT APPLICATIONS—Continued

PRODUCER#, DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Shell Oil Co.:					
CI66-689 Tennessee Gas Transmission Co.	Seven Sisters	Tex	Duval	4 5 66	Iss.
Skelly Oil Co.:					
CI66-852 Cities Service Gas Co.	Driftwood	Kans	Barber	5 17 66	Iss.
Socony Mobil Oil Co., Inc., Operator, et al.:					
CI66-876 El Paso Natural Gas Co.	Signal Peak	Tex	Culberson	5 12 66	Iss.
Southwestern Exploration Consultants, Inc., Operator, et al.:					
CI66-1024 Lone Star Gas Co.	Undesignated	Okla	Stephens	6 16 66	Iss.
CI66-1025 Lone Star Gas Co.	Undesignated	Okla	Jefferson	6 16 66	Iss.
CI66-1026 Lone Star Gas Co.	Undesignated	Okla	Stephens	6 16 66	Iss.
CI66-1027 Lone Star Gas Co.	Undesignated	Okla	Jefferson	6 16 66	Iss.
CI66-1028 Lone Star Gas Co.	Undesignated	Okla	Jefferson	6 16 66	Iss.
Strata Drilling, Inc., Operator, et al.:					
CI66-999 Panhandle Eastern Pipe Line Co.	Childs Pool	Kans	Stafford	6 3 66	Iss.
Sun Oil Co., Southwest Division:					
CI66-682 Lone Star Gathering Co.	Ida Weitz	Tex	Victoria	4 5 66	Iss.
CI66-992 Tennessee Gas Pipeline Co., a Division of Tenneco Inc.	Cranell	Tex	Refugio	5 25 66	Iss.
Sunray DX Oil Co.:					
CI66-770 Kansas-Nebraska Natural Gas Co., Inc.	Minto	Colo	Logan	5 17 66	Iss.
Sunset International Petroleum Corp.:					
CI66-432 El Paso Natural Gas Co.	Southeast Farnsworth.	Tex	Ochiltree	4 26 66	Rej.
Texaco Inc.:					
CI66-1092 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton	Kans	Finney	6 27 66	Iss.
Tidewater Oil Co., Operator, et al.:					
CI66-556 Wunderlich Development Co.	SW Ponca City	Okla	Kay	6 27 66	Iss.
Turnbull & Zoch Drilling Co., Operator, et al.:					
CI66-944 Florida Gas Transmission Co.	Buhler	La	Calcasieu	5 25 66	Iss.
Union Producing Co.:					
G-13633 United Gas Pipe Line Co.	Lake Bistineau	La	Bienville	4 29 66	Iss.
CI66-708 United Gas Pipe Line Co.	Monroe	La	Union	4 5 66	Iss.

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*Indicates that other fields, counties, or States are also included.

#Producers' and Purchasers' may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Rej., rejected; Wtd., withdrawn.